LIBRARY
SUPREME COURT, U. S.

APPENDIX

Supreme Court, U.S.
FILED
JUL 22 1971
E. ROBERT SEAVER, CLERK

70-128

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ~~1600~~

MARTIN DIES, JR., ET AL.,
Appellants

vs.

VAN PHILLIP CARTER, ET AL.,
Appellees

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division

---

FILED APRIL 21, 1971
JURISDICTION NOTED JUNE 7, 1971

INDEX

	Page
DOCKET ENTRIES (CA-3-3739) (Pate)	2
DOCKET ENTRIES (CA-3-3733) (Wischkaemper)	4
DOCKET ENTRIES (CA-3-3635) (Carter)	6
PLAINTIFF'S ORIGINAL PETITION (Carter)	9
SECOND AMENDED ORIGINAL THREE-JUDGE APPLICATION AND COMPLAINT (Pate)	11
PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION (Wischkaemper)	34
PLEA OF INTERVENTION (Jenkins)	41
MOTION FOR CONSOLIDATION OF ACTIONS, MOTION TO INTERVENE AS A PLAINTIFF, OR CLASS PLAINTIFF, MOTION TO EXPEDITE AND FOR TEMPORARY ORDERS	49
MOTION FOR LEAVE TO INTERVENE (Guzman, et al.)	83
STIPULATION OF FACTS (April 2, 1970)	95
ORDER (On Preliminary Relief—April 3, 1970)	105
STIPULATION OF FACT (August 27, 1970)	109
STIPULATION OF FACT (October 9, 1970)	140
STIPULATION OF FACT (October 19, 1970)	142
OPINION	145
JUDGMENT	160
NOTICE OF APPEAL	162

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

VAN PHILLIP CARTER

vs.

MARTIN DIES, JR., AND
DR. ELMER C. BAUM

CA 3-3744-C — 3733-C

THEODORE H. WISCHKAEMPER,
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED

vs.

ROBERT L. WRIGHT, CHAIRMAN OF THE
TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL.

REUBIN JENKINS, INTERVENOR

CA 3-3739-C

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED

vs.

GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS,
AND INDIVIDUALLY, AND THE COUNTY DEM-
OCRATIC EXECUTIVE COMMITTEE OF EL
PASO COUNTY, TEXAS, AND THE PRIMARY
COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L.
SIFUENTES, AND MANUEL SAPIEN, ON BE-

HALF OF THEMSELVES AND ALL OTHER SIMILARLY SITUATED, AND AS MEMBERS OF U.N.I.O.N., INCORPORATED, INTERVENORS

CIVIL DOCKET
UNITED STATES DISTRICT COURT
THREE JUDGE COURT
JUDGE TAYLOR, JUDGE HUGHES, JUDGE THORNBERRY

CA-3-3739

Jury demand date:

WILLIAM PATE, on behalf of himself and all others similarly situated
vs.
GEORGE A. McALMON, JR., as Chairman of the County Democratic Executive Committee of El Paso County, Texas, and individually, and the County Democratic Executive Committee of El Paso County, Texas, and the Primary Committee

ATTORNEYS

For plaintiff:
Joseph A. Calamia
John L. Fashing
Calamia & Fashing
608 Southwest National Bank Bldg.
El Paso, Texas 79901

For defendant:
Mark F. Howell
508 Southwest National Bank Bldg.
El Paso, Texas 79901

For Governor & Atty. Gen.:
William J. Craig
Assistant Attorney General
Box R, Capitol Station
Austin, Texas 78711

DATE	PROCEEDINGS
1-14-70	1) Filed Original Three Judge Application and Complaint, in dup.
1-16-70	Issued summons and copy to George A. McAlmon, Jr., as Chairman Democratic Ex. Committee of El Paso Co., Texas
2-12-70	2) Filed Defendants' Original Answer, in dup.
2-17-70	3) Filed First Amended Original Three Judge Application and Complaint, and Order Granting leave to file, in dup.
3- 3-70	4) Filed Copy of designation and composition of the three-judge court—Honorable Ernest Guinn, Honorable D. W. Suttle, and Honorable Homer Thornberry
3- 5-70	5) Filed Plaintiffs' Motion to Set Hearing, in dup.
3- 5-70	6) Filed Brief in Support of Plaintiffs' Motion to Set Hearing, in dup.
3-13-70	7) Filed Stipulation for Amendment of Complaint, in quad.
3-13-70	8) Filed Second Amended Original Three Judge Application and Complaint, in quad. (Copies furnished Judges 3-13-70)
3-16-70	Issued summonses and copies to Preston Smith, as Governor of State of Texas; Crawford Martin as Attorney General of State of Texas; and Martin Dies, Jr., as Secretary of State of State of Texas.
3-16-70	9) Filed Stipulation for Amendment to Complaint and Motions to Intervene and Consolidate Actions, in quad. (Copies furnished Judges 3-17-70).
3-16-70	10) Filed Motion for Consolidation of Above Actions; Motion to Intervene as a Plaintiff or Class Plaintiff; Motion to Expedite and for Temporary Orders, in quad. (Copies furnished Judges 3-17-70).
3-16-70	11) Filed Brief in Support of Motion for Consolidation of above

Actions; Motion to Intervene as a Plaintiff or Class Plaintiff; Motion to Expedite and for Temporary Orders, in quad. (Copies furnished Judges 3-17-70).

3-17-70 12) Filed Motion for Leave to Intervene—Carlos Guzman et al.—in quad. (Copies furnished Judges 3-17-70).

3-17-70 13) Filed Brief in Support of Motion for Leave to Intervene, in quad. (Copies furnished Judges 3-17-70).

3-19-70 14) Filed Defendants' Memorandum of Authorities of Defendant, in quad. (Copies furnished Judges 3-20-70).

3-19-70 15) Filed Memorandum Brief filed at the Request of the Court (Pltfs.) (Copies furnished Judges 3-24-70).

3-24-70 16) Filed Ret. Summons to Geo. A. McAlmon, Jr., as Chairman of the County Democratic Ex. Committee of El Paso Co., Tex. and individually. Ex. 1-22-70 at El Paso, Tex.

3-24-70 17) Filed Ret. Summons to Preston Smith, as Governor of the State of Texas. Ex. 3-20-70 at Austin, Tex.

3-24-70 18) Filed Ret. Summons to Crawford Martin, as Atty. Gen. of the State of Tex. Ex. 3-20-70 at Austin, Tex.

3-24-70 19) Filed Order transferring case to the Northern Dist. of Tex., in dup. (Copies furnished Judges by Judge Thornberry 3-24-70).

3-25-70 20) Filed Brief in Support of Plaintiff Intervenor's Proposed Complaint, in quad (Copies furnished Judges 3-25-70).

3-26-70 21) Filed Order entered by John R. Brown, Chief Judge, U. S. Court of Appeals for the Fifth Circuit, taking notice of transfer of this cause to the Northern District of Texas and reconstituting the Court. (Copies furnished Judges by Judge Brown 3-24-70).

3-27-70 22) Received file from Western District of Texas, El Paso.

3-25-70 23) Filed ORDER setting hearing before 3-Judge Court on April 3 1970, at 10.00 A.M. (Copies mailed to El Paso attorneys by certified mail.)

4- 2-70 24) Filed 4 AFFIDAVITS. (Manuel Sapien, Luz A. Lozano, Carlos Guzman and Andres L. Sifuentes).

4- 2-70 25) Filed STIPULATION OF FACTS concerning intervenors.

4- 3-70 26) Filed SUPPLEMENT MEMORANDUM OF AUTHORITIES OF DEFENDANT, GEORGE McALMON, JR.

4- 3-70 27) Filed ORDER on motions for preliminary injunction. Relief denied as to plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments. (Relief granted in CA-3-3733 and CA-3-3739 as to Wischkaemper and Pate, individually and apart from any class they represent; Relieved from payment of challenged filing fees until Court passes on all questions raised, etc.) Judges Thornberry and Hughes concurring; Judge Taylor dissenting Copies of Order distributed at Clerks office 4-3-70.

4- 9-70 28) Filed DEFENDANTS' ORIGINAL ANSWER.

4-15-70 29) Pre-trial notice mailed to counsel. (Copy of Order entered 4-3-70 mailed to Atty. Gen. William Craig.) Pre-trial set 7-10-70 @ 9 A.M.

8-24-70 30) Filed STIPULATION OF FACT in CA3-3635-C; CA3-3733-C; CA3-3739-C (Placed in file of CA3-3635-C).

9- 8-70 31) Filed PLAINTIFF INTERVENOR'S BRIEF (placed in file of CA3-3635-C). Mailed copy to Judge Thornberry; copy for Judge Hughes.

9-10-70 32) Filed PLAINTIFF & INTERVENOR'S BRIEF (Wischkaemper & Jenkins). CA3-3733. Copies furnished Judges Thornberry & Hughes.

9-11-70 33) Filed PLAINTIFF PATE'S BRIEF in CA3-3739. (Copies furnished Judges.)

9-29-70 34) Filed MEMORANDUM OF AUTHORITIES OF DEFENDANT. (placed in CA3-3635-C).

10-23-70	35)	Filed DEFENDANTS' TRIAL BRIEF (State of Texas & Dr. Tomme) In CA3-3635.
10- 5-70	36)	Filed STATEMENT OF CHARLES F. HERRING, ATTY. FOR DR. ELMER C. BAUM, adopting Trial Brief of Atty. Gen. of Texas.
10- 9-70	37)	Filed STIPULATION OF FACT re salaries of state officers.
10- 9-70	38)	Filed STIPULATION OF FACT re records of Co. Clerk of Tarrant County, Texas, concerning run-off primaries held in Demo. Primary in June in listed ofcs. during yrs. 1958-68.
10- 9-70	39)	Filed REPLY BRIEF OF PTF. WISCHKAEMPER AND INTERVENOR JENKINS.
12-21-70	40)	Filed OPINION of 3-Judge Court.
12-31-70	41)	Filed JUDGE THORNBERRY'S CONCURRING OPINION.
12-21-70	42)	Filed ORDER that Texas Election Code Ann. Arts 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967) are declared to be on-constitutional because they infringe upon First Amendment rights w/o any compelling justification in violation of the 1st & 14th Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967). Copies of ORDER and OPINION mailed by Judge Taylor's office to all counsel.

CIVIL DOCKET
UNITED STATES DISTRICT COURT
THREE JUDGE COURT
JUDGE TAYLOR, JUDGE HUGHES, JUDGE THORNBERRY

Jury demand date:

CA-3-3733

TITLE OF CASE	ATTORNEYS
THEODORE H. WISCHKAEMPER ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED REUBIN JENKINS, INTERVENOR vs. ROBERT L. WRIGHT, CHAIRMAN OF THE TARRANT COUNTY DEMOCRATIC EXECUTIVE COMMITTEE	For plaintiff: Theodore H. Wischkaemper ATTY: A. L. CROUCH 908 E. Butler St. Ft. Worth, Texas 76110 For Intervenor: A. L. Crouch 109 N. Taylor Ft. Worth For defendant: For Robt. L. Wright: Stone, Tilley, Parker, Snakard, Law & Brown 1500 Ft. Worth Natl. Bank Bldg. Ft. Worth, Texas 76102 By: Thos. H. Law & Robt. K. Ro For Dr. Tomme: Estil Vance, Jr. Cantey, Hanger, Gooch, Cravens & Mu 1800 First National Building Fort Worth, Texas 76102 For Atty. Gen. & Governor: William J. Craig, Assistant Atty. Gen., Box R, Capitol Station, Austin 78711

DATE	PROCEEDINGS
3-25-70	1) Received the following papers by order of transfer from Ft. Worth Div. 12-15-69: Filed Complaint. 12-15-69: Summons issued. 12-17-69: Marshal's return. Robert L. Wright served 12-17-69. 1- 6-70: Filed Deft's MOTION TO DISMISS, and SUBJECT THERETO, ANSWER. 1-13-70: Ptf's First Amended Petition. 1-13-70: Motion (to substitute deft.). 2- 7-70: Notice of Motion by Ptf. to amend complaint by dismissing & adding Deft's Third original amended petition. 2-13-70: Motion to bring in new deft. 3-13-70: Plea in Intervention of Reubin Jenkins. 3-13-70: Ptf's Third Amended Original Petition. 3-13-70: Order—per oral order of the court in this cause at the hearing of 3-13-70—No. 34055C—Edward J. Greene vs. A. L. Crouch, in the Dist. Court of Tarrant County., Texas, 153rd Judicial Dist., dtd April 8, 1964. 3-16-70: Filed ORDER GRANTING LEAVE TO FILE PLEA IN INTERVENTION OF REUBIN JENKINS. 3-25-70: Issued Summons on 3rd Amended Petition, to Preston Smith; Attorney General; Dr. J. D. Tomme, Jr. 3-25-70: ORDER transferring to Dallas Division.
3-25-70	2) Filed Ptf's MOTION FOR PRELIMINARY INJUNCTION.
3-25-70	3) Filed Ptf's MOTION TO DISQUALIFY JUDGE.
3-25-70	4) Filed Ptf's MOTION FOR PERSONAL SERVICE. (See above—summons has been issued.)
3-25-70	5) Filed Ptf's APPLICATION FOR THREE-JUDGE COURT.
3-25-70	6) Filed ORDER SETTING THREE JUDGE HEARING FOR 4-3-70, 10 A.M. (This order was served with the summons, to Preston Smith; to Atty. General; to Dr. J. D. Tomme, Jr.)
3-27-70	7) Filed DESIGNATION by John R. Brown, Circuit Judge of the following three-judge panel: W. M. Taylor, JR., SARAH T. HUGHES, HOMER THORNBERRY.
3-27-70	8) Filed RETURN ON SUMMONS executed 3-26-70 by serving Dr. J. D. Tomme, Jr., in person; serving J. D. Tomme, Jr. as Chairman of the Tarrant Co. Democratic Exec. Comm., Ft. Worth, Tex. (MD-19946).
4- 2-70	9) Filed RETURN ON SUMMONS executed 3-30-70 by serving Preston Smith, Governor of Texas by delivering to Bob Glasgow, agent. (MD-19946).
4- 3-70	10) Filed ANSWER OF DR. J. D. TOMME, JR.
4- 3-70	11) Filed RETURN ON SUBPOENA DUCES TECUM executed 4-1-70 by serving Dr. J. D. Tomme, Jr.
4- 3-70	12) Filed ORDER on motions for preliminary injunction. Relief denied as to plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments. (Relief granted in CA-3-3733 and CA-3-3739 as to Wischkaemper and Pate, individually and apart from any class they represent; relieved from payment of challenged filing fees until Court passes on all questions raised, etc.). Judges Thornberry and Hughes concurring; Judge Taylor dissenting. Copies of Order distributed at Clerk's office 4-3-70.
4- 9-70	13) Filed DEFENDANTS' ORIGINAL ANSWER.
4-10-70	14) Filed Return on Summons executed 3-27-70 by serving Crawford Martin by delivering to Alfred Walker, agent for the Texas State Attny Gen., Austin, Tex. (MD-19946).
4-15-70	15) Pre-trial notice mailed to counsel; also mailed Wm. J. Craig a copy of the Order entered 4-3-70. (Pre-trial set 7-10-70 @ 9 A.M.).

4-27-70	16) Filed ANSWER OF DR. J. D. TOMME, JR. TO PLEA OF INTERVENTION OF REUBIN JENKINS.
8-24-70	17) Filed STIPULATION OF FACT IN CA3-3635-C; CA3-3733-C; CA3-3739-C (placed in file of CA3-3635-C).
9- 8-70	18) Filed PLAINTIFF INTERVENOR'S BRIEF (placed in file of CA3-3635-C). Copy mailed to Judge Thornberry; copy for Judge Hughes.
9-10-70	19) Filed PLAINTIFF & INTERVENORS BRIEF (Wischkaemper & Jenkins). Copies furnished Judges. (CA3-3635.) CA-3-3635.
9-11-70	20) Filed PLAINTIFF PATE'S BRIEF in CA3-3739. (Original in CA-3-3635.)
9-29-70	21) Filed MEMORANDUM OF AUTHORITIES OF DEFENDANT (placed in CA3-3635-C).
10- 2-70	22) Filed DEFENDANTS' TRIAL BRIEF (State of Texas & Dr. Tomme) placed in CA-3-3635.
10- 5-70	23) Filed STATEMENT OF CHARLES F. HERRING, ATTY. FOR DR. ELMER C. BAUM, adopting Trial Brief of the Atty. Gen. of Texas (placed in CA-3-3635).
10- 9-70	24) Filed STIPULATION OF FACT re salaries of state officers (placed in CA-3-3635).
10- 9-70	25) Filed STIPULATION OF FACT re Tarrant County Clerk's records concerning run-off primaries held in Demo- Primary in June in listed ofcs. during years 1958-69.
10- 9-70	26) Filed REPLY BRIEF OF PLAINTIFF WISCHKAEMPER & INTERVENOR JENKINS (CA-3-3635).
12-21-70	27) Filed OPINION OF 3-Judge Court. Filed JUDGE TORNHBERRY'S CONCURRING OPINION.
12-21-70	28) Filed ORDER that Texas Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967) are declared to be unconstitutional, because they infringe upon First Amendment rights w/o any compelling justification in violation of the 1st & 14th Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967). Copies of ORDER and OPINION mailed by Judge Taylor's office to all counsel.

CIVIL DOCKET
UNITED STATES DISTRICT COURT
THREE JUDGE COURT
(THORNBERRY, HUGHES, TAYLOR) CA-3-3635
Jury demand date:

VAN PHILLIP CARTER
vs.
MARTIN DIES JR. and
DR. ELMER C. BAUM

ATTORNEYS

For plaintiff:
H. Averil Sweitzer
Fifth Floor, Manor House
1222 Commerce
Dallas, Texas 75202 747-2845

For Defendant:

For Baum:
Charles F. Herring
Small, Herring, Craig, Werkenthin & Shannon
900 Perry Brooks Bldg.
Austin, Texas 78701
512/472-8355

For Martin Dies, Jr.
Crawford C. Martin
Attorney General of Texas
Capitol Station
Austin, Texas 78711
William J. Craig, Assistant

DATE	PROCEEDINGS
2- 6-70	1) Filed PLAINTIFF'S ORIGINAL PETITION and issued SUMMONSES (2).
3- 4-70	2) Filed Ptf's MOTION FOR UNDER RULE 81(b) directing U.S. Marshal to serve defts. within 48 hours.
3- 4-70	3) Filed ANSWER OF DEFENDANT ELMER C. BAUM.
3- 9-70	4) Filed RETURN ON SUMMONS executed 2-20-70 by serving Martin Dies, Jr. and Dr. Elmer C. Baum at Austin, Tex. (MD-19815)
3-11-70	5) Filed DEFENDANT'S ORIGINAL ANSWER (Martin Dies, Jr.).
3-13-70	6) Filed APPLICATION FOR THREE-JUDGE COURT.
3-13-70	7) Filed MOTION FOR PRELIMINARY INJUNCTION.
3-13-70	8) Filed CERTIFICATE OF SERVICE for application and motion.
3-25-70	9) Filed ORDER SETTING 3-JUDGE HEARING FOR 4-3-70, 10 A.M.
3-27-70	10) Filed DESIGNATION by John R. Brown, Chief Judge of 5th Circuit, designating the following 3-Judge panel: Homer Thornberry, Sarah T. Hughes, and W. M. Taylor, Jr. (parties & Atty. General notified by Judge Taylor's law clerk).
4- 3-70	11) Filed ORDER on motions for preliminary injunction. Relief denied as to plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments. (Relief granted in CA 3-3733 and CA 3-3739 as to Wischkaemper and Pate, individually and apart from any class they represent: relieved from payment of challenged filing fees until Court passes on all questions raised, etc.) Judges Thornberry and Hughes concurring; Judge Taylor dissenting. Copies of Order distributed at Clerk's office 4-3-70.
4- 6-70	12) Filed MOTION TO DISMISS on behalf of Dr. Elmer C. Baum. (Mailed copy to Judge Thornberry; sent copy to Judge Hughes.) (Certificate of Service on Defendants' Original Answer re Pate & intervenors, Wischkaemper & Jenkins, reflects that a copy of same was sent to plaintiff's counsel in this case.)
8-24-70	13) Filed STIPULATION OF FACT in CA 3-3635-C; CA 3-3733-C; CA 3-3739-C (placed in file of CA 3-3635-C).
9- 8-70	14) Filed PLAINTIFF INTERVENOR'S BRIEF (placed in file of CA 3-3635-C). Sent copies to Judges Thornberry and Hughes.
9-10-70	15) Filed PLAINTIFF & INTERVENOR'S BRIEF—Wischkaemper & Jenkins in CA 3-3733.
9-11-70	16) Filed PLAINTIFF PATE'S BRIEF in CA 3-3739. Copies furnished Judges.
9-29-70	17) Filed MEMORANDUM OF AUTHORITIES OF DEFENDANT (placed in CA 3-3635-C).
10- 2-70	18) Filed DEFENDANTS' TRIAL BRIEF (State of Texas & Dr. Tomme).
10- 5-70	19) Filed STATEMENT OF CHARLES F. HERRING, ATTY FOR DR. ELMER C. BAUM, adopting Trial Brief of the Atty Gen. of Texas.
10- 9-70	20) Filed STIPULATION OF FACT re salaries of state officers. (Copies furnished Court.)
10- 9-70	21) Filed STIPULATION OF FACT re records of County Clerk of Tarrant County, Texas, concerning run-off primaries held in the Democratic Primary in June in listed offices during years 1958-68.

10- 9-70	22)	Filed REPLY BRIEF OF PLAINTIFF WISCHKAEMPER AND INTERVENOR JENKINS (copies furnished Court).
10-10-70	23)	Mailed Judge Thornberry a copy of Stipulation of Fact re Tarrant Co. records; placed copy in box for Judge Hughes.
12-21-70	24)	Filed OPINION of 3-Judge Court. Filed JUDGE THORNBERRY'S CONCURRING OPINION.
12-21-70	25)	Filed ORDER that Texas Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are declared to be unconstitutional because they infringe upon First Amendment rights w/o any compelling justification in violation of the 1st & 14th Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967). Copies of ORDER and OPINION mailed by Judge Taylor's office to all counsel.
2-19-71	26)	Filed NOTICE OF APPEAL by State of Texas.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION CA-3-3635-C

(Title Omitted in printing)

PLAINTIFF'S ORIGINAL PETITION

Now comes Van Phillip Carter, Hereinafter called Plaintiff petitioning for relief from the acts of Martin Dies Jr., Secretary of State of Texas and the State Chairman of the Democratic Party of Texas and petitions for relief as set out in Plaintiff's Prayer on the following grounds:

I.

Plaintiff is a resident of Dallas County, Texas. Defendant, Martin Dies Jr., is the duly appointed Secretary of State of Texas. Defendant, Elmer C. Baum is the Chairman of the Democratic Party of Texas an unincorporated political association.

II.

On February 2, 1970, Plaintiff attempted to file with the Chairman of the Democratic Party of Dallas County for the office of Commissioner of Public Lands. Said request was refused on the grounds that state statute required that the applications be made in Austin, in person to the Executive Committee of the Democratic Party of Texas, by 6:00 p.m., February 2, 1970. Application was then made by telegram to said Defendant Chairman setting out the statutory information required to file for said office and informing them that a notarized copy was on file at the Dallas office. By return telegram February 2, 1970, the Defendant Chairman stated that said application was denied.

III.

Said filing was refused pursuant to state statute requiring that said filing fee be in the amount of $1,000.00, V.A.T.S. Election Code, art. 13.15, and V.A.T.S. Election Code, Act 13.12.

IV.

Plaintiff has substantially complied the statutory requirement of filing except for payment of the filing fee and the effect of such requirement deprives the majority of the right to run for, and therefore to hold office. Specifically it denies Plaintiff the equal protection of the laws required by the 14th Amendment of the United States Constitution in that it effectively denies him the equal opportunity to run for, and therefore hold office. It also sets a property requirement for holding office.

WHEREFORE, Plaintiff prays that Article 13.15 be held unconstitutional and therefore the filing for the Democratic primary of Texas closed by statute February 2, 1970 for the office of State Commission of Public Lands be reopened without filing fee or, in the alternative an injunction be issued ordering the Defendant Chairman to certify Plaintiff's name to the Defendant Secretary of State of Texas to be placed on the Democratic Party's ballot for Primary election of 1970 and that the Defendant Secretary of State of Texas be enjoined to accept such certification and to place Plaintiff's name on said ballots.

(Signature)
H. AVERIL SWEITZER
Fifth Floor, Manor House
1222 Commerce
Dallas, Texas 75202
747-2845

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

SECOND AMENDED ORIGINAL THREE JUDGE APPLICATION AND COMPLAINT

Comes now the Plaintiff WILLIAM PATE, and files this his Second Amended Original Three Judge Application and Complaint with written consent of the adverse party first had pursuant to Rule 15(a) Federal Rules of Civil Procedure, and complaining of GEORGE A. McALMON JR., as Chairman of the County Democratic Executive Committee of El Paso County, Texas, the County Democratic Executive Committee of El Paso County, Texas, the Democratic Primary Committee of El Paso County, Texas, Preston Smith as Governor of the State of Texas, Crawford Martin, as Attorney General of the State of Texas, and Martin Dies, Jr., as Secretary of State of the State of Texas, and for cause of action would respectfully show unto the three Judge Court, the following:

The defendants, Preston Smith, Crawford Martin, and Martin Dies, Jr. are sued in their representative capacities as elected officers of the State of Texas. The various official individuals sued herein are charged with duties in connection with state and county primary and general elections. The Governor of the State of Texas, PRESTON SMITH, and the Attorney General of the State of Texas, CRAWFORD MARTIN, are also sued so that they will receive at least five days notice of hearings pursuant to 28 U. S. C. 2884 (2).

1. This action arises under the Equal Protection and Due Process Clauses of the Fourteenth Amend-

ment to the United States Constitution, and the Freedom of Assembly Clause of the First Amendment to the United States Constitution, which secures certain rights, privileges and immunities of all citizens, as the defendants have deprived the plaintiff of the right to an equally effective voice in the election process by an invidious discrimination by imposing upon those seeking to have their names placed upon the ballot as candidates for certain district, county, and precinct public offices in the El Paso County, Texas Democratic Primary Election set for May 2, 1970, exorbitant, unreasonable, arbitrary, capricious, irrelevant, and outrageously high filing fees or assessments which bear no reasonable relation to any legitimate legislative purpose and such filing fees are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. The filing fees or assessments are so high they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay or who fail or refuse to pay the filing fees or assessments imposed by the El Paso County Democratic Executive Committee. These filing fees also prevent qualified voters from voting for those persons whose candidacy is prevented by such filing fees. Plaintiff WILLIAM PATE is unable to pay and will not pay the filing fee or assessment of $1,424.60 set for the office of County Commissioner of Precinct Four, thus depriving him of his right to vote for himself.

Furthermore, the introduction of wealth as payment of a fee as a prerequisite or measure of a citizen's or voter's qualifications to have his name placed on the primary ballot, or to vote, is to introduce a capricious or irrelevant factor, and the requirement of fee paying in this context as a condition to be a candidate or voter

in the El Paso Democratic primary, causes an invidious discrimination that per se violates the Equal Protection Clause and furthermore, the Texas Statutes under attack permit and provide an invidious classification discrimination between various candidates for different offices by having different filing fees for the various candidates.

The County Democratic Executive Committee has deemed that the length of a prospective candidate's pocketbook alone will be made the yardstick as to whether his name appears or does not appear on the primary ballot. It is a fundamental rule of human nature and political behavior that high filing fees for public office tends to keep the "ins" in and the "outs" out. Furthermore, defendant will effectively deprive the plaintiff of his right to vote, for the right to run for public office is a correlative of the right to vote.

The defendants have denied the plaintiff and class plaintiffs their fundamental political right of freedom of association (political association) for the purpose of voting and being nominated as candidates for public office in the democratic primary in violation of the First Amendment, by reason of the Equal Protection and Due Process clauses of the Fourteenth Amendment, by an invidious discrimination through the establishment of filing fees as a prerequisite to running for nomination to public office.

2. Jurisdiction of this action is conferred upon the Court under the provisions of the Civil Rights Act, 42 USC Section 1983 and Section 1988, and also under 28 USC Sections 1343 (2), 2281 and 2284. This is an action for declaratory judgment initiated pursuant to 28 USC, Sections 2201 and 2202, for preliminary, interlocutory, permanent and mandatory injunctions and temporary restraining orders to prevent irreparable damage to

plaintiff, and for further and different relief as may be appropriate in equity and law, and seeks to redress the deprivation of Federal Constitutional rights. There is now existing between the parties an actual, justiciable controversy in respect to which plaintiffs need injunctive relief, a declaration of their rights, as well as other equitable relief and orders by this Court.

This complaint is based in part upon state action and the defendant's action as an agency of the State of Texas as the defendants participate in what is a part of the state's election machinery and they are election officers of the state de facto, if not de jure, in light of the Texas Election Code. The foregoing is supported by *Smith v. Allwright,* 1944, 321 U.S. 649; *Terry v. Adams,* 1953, 345 U.S. 461; *Harper v. Virginia State Board of Election,* 1966, 383 U.S. 663; *Williams v. Rhodes,* 1968 —— U.S. ——, and *Cipriano v. Houma,* 1969, —— U.S. ——.

3. This is a class action on behalf of the plaintiffs and all other people similarly situated to restrain the enforcement of a Texas statute and prospective resolutions and resolution of the County Democratic Executive Committee of El Paso County, Texas, which deprives the plaintiff and other members of the class to which Plaintiff Pate belongs, of rights, privileges and immunities secured by the Constitution of the United States. Plaintiff and class plaintiffs are all qualified voters, taxpayers and citizens of El Paso County, Texas, and putative or prospective democratic candidates in present and future Democratic primary elections for certain district, county and precinct public offices in El Paso County, Texas. Such persons are so numerous as to make it impractical to bring them all before the Court; the claim of the plaintiff is typical of the claims of such persons, and the plaintiff will

adequately and fairly represent the interest of such persons, and there are common questions of law or fact common to all plaintiffs and such persons. The plaintiff William Pate is a resident of County Commissioner's Precinct Four and has announced his intention to run for the office of County Commissioner for Precinct Four in El Paso County, Texas, and has filed his application for a place on the Democratic primary ballot for the May 2, 1970 primary election with the Chairman of the County Democratic Executive Committee of El Paso County, Texas. Furthermore, the plaintiff intends to run for the office of County Commissioner for Precinct Four in El Paso County, Texas in the May 1974 Democratic primary election and in future elections thereafter and to be a voter in such elections.

4. The defendant McALMON is a resident and citizen of El Paso County, Texas and is the duly elected chairman of the County Democratic Executive Committee of El Paso County, Texas. Defendant McAlmon as the Chairman of the County Democratic Executive Committee is the Democratic Party Officer with whom applications for a place on the Democratic Primary ballot for the present primary Democratic election set for May 2, 1970 and for future Democratic primary elections shall be filed in the case of district offices included wholly or partially with El Paso County, Texas and county and precinct offices within El Paso County, Texas. Application shall be filed by the first Monday in February preceding each primary. Within ten days after the first Monday in February, the El Paso County Democratic chairman shall lawfully certify to and file with the El Paso, Texas County Clerk a list of the names of all candidates whose applications have been timely received or filed. The Chairman of the County Democratic Executive Committee in primary elections

shall cause the proper ballot label to be placed on voting machines and will cause all official primary ballots to be printed.

5. Defendant Democratic primary committee, of which county democratic chairman is ex-officio chairman, make up the official ballot for the Democratic general primary in accordance with request filed with the County Democratic chairman on the official ballot.

6. In accordance with Article 13.08, Texas Election Code, the defendant Democratic County Executive Committee apportions the cost (by assessment) of the Democratic primary election among the various candidates for nomination for district, county and precinct offices, except candidates for the offices of Justice of the Court of Civil Appeals, office of the State Board of Education, the office of State Senator, and State Representative, and other State officials and pay the fixed filing fee set by Texas Statute.

The defendant Democratic Executive Committee makes an assessment against the candidates which must be paid to the Democratic Executive Committee chairman by the fourth Monday in February (February 23, 1970) and no person's name shall be placed on the ballot unless he pays the assessment within the prescribed time.

7. Historically, the defendant El Paso County Democratic Executive Committee has assessed each candidate a sum equal to twenty (20) percent of the aggregate annual salary provided for the office for which they seek election, except as otherwise provided by law. The assessments of candidates for Democratic Primary of May 2, 1970 has now been made for El Paso County, Texas, and has been set at seventeen (17) percent of the assessed salary, except as otherwise provided by

law. A list of assessments made for each office to be nominated at the May 2, 1970 primary election is marked Exhibit "A" and is attached hereto and adopted herein by reference for all intents and purposes. Plaintiff William Pate has been assessed $1,-424.60 as a filing fee for the office of County Commissioner of Precinct Four of El Paso County, Texas by the El Paso County Democratic Executive Committee ad its chairman. A copy of the assessment letter marked as Exhibit "B" is attached hereto and adopted herein by reference for all intents and purposes. Exhibit "C" attached hereto and adopted herein by reference for all intents and purposes, reflects the filing fees, if any, for primary and general elections of the fifty states as derived from state codes.

8. Defendant McAlmon is sued individually and in his representative capacity as Chairman of the County Democratic Executive Committee, El Paso County, Texas, and as the ex-officio chairman of the Democratic Primary Committee.

9. Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, are void and unconstitutional as they violate the equal protection and due process clauses of the Fourteenth Amendment, and the Freedom of Assembly clauses of the First Amendment to the United States Constitution, in that they impose and permit filing fees or assessments for candidates for public offices in the democratic primary election to be held May 2, 1970 and in future primary elections, upon persons who by reason of their lack of funds or poverty, are unable to pay said filing fees or assessments, or fail or refuse to pay said filing fees or assessments. The Chairman of the El Paso Democratic Executive Committee will not accept candidates' applications for a place on the ballot or file their names with the County Clerk of

El Paso County, Texas, unless a deposit of $50.00 is made and the assessment made by the Democratic Executive Committee is paid timely. The ex-officio chairman of the democratic party committee and the democratic party committee will not place any person's names on the official democratic primary ballot who has not filed an application for a place on the ballot along with the prerequisite of paying the deposit of $50.00 and the assessment as made by the democratic executive committee. The filing fee or assessment to be set by the El Paso Democratic executive committee is exorbitant, arbitrary, capricious, irrelevant, unreasonable, outrageously high, and bears no reasonable relation to any legitimate legislation purpose and are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. In setting filing fees and assessments at such unreasonable and outrageously high level, and permitting some candidates to file in the democratic primary by merely paying a fixed fee, as for State legislators, the fee of $150.00, the statutes in question and the prospective resolutions and resolution of the El Paso Democratic Executive Committee making assessments under Article 13.08, Texas Election Code, deprive the plaintiff and all other persons similarly situated, of rights, privileges and immunities secured by the equal protection and due process clauses of the 14th Amendment, and the freedom of assembly clause of the First Amendment to the United States Constitution, and establishes an invidious classification discrimination.

10. The plaintiff and all other persons similarly situated are unable to and refuse to pay the filing fees and assessments imposed by the Texas statutes under attack and the assessments to be made and made by the El Paso Democratic Executive Committee and the

State of Texas under the Texas election code which establishes fixed fees for some candidates, and therefore, they are deprived of their right to seek nomination to public office, to seek public office, and to the right to vote in the 1970 and in all future primary election.

WHEREFORE, plaintiffs pray for declaratory, injunctive relief, and for temporary restraining order as follows:

A. That this Court (single judge) immediately notify the Chief Judge of the Fifth Circuit that this application for injunctive and other relief has been presented to this Court in accordance with the procedure for a three Judge court under 28 USC 2281 and 2284, so that said Chief Judge of the Fifth Circuit can designate two other judges to serve as members of this Court to hear and determine this action or proceeding.

B. That this complaint and application be given precedence and be advanced on the docket and assigned for a hearing at the earliest practicable day.

C. That this Court order this matter litigated as a class action.

D. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against the plaintiff or similarly situated persons as a prerequisite to filing and application for a place on the ballot for public office in the Democratic Primary Election set for May 2, 1970 and all future primary elections.

E. That this Court order the defendants to place plaintiff's name and the names of other similarly situated persons on the official ballot in the Democratic

Primary election of May 2, 1970 and all future primary elections without the payment of the filing fees or assessments for the office of County Commissioner of Precinct Four, El Paso County, Texas, and for other public offices, in order that persons who are unable to afford the payment of outrageously high and unconstitutional filing fees or assessments may place their name in nomination for public office in the present and future democratic primaries in El Paso County, Texas, or who fail or refuse to pay any filing fees.

F. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against any person who seeks public office who is unable to afford the payment of outrageously high and unconstitutional filing fees or assessments, or who fails or refuses to pay any filing fee.

G. That Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, be declared void and unconstitutional.

H. That this Court grant relief in that the defendants be ordered to place plaintiffs name upon the ballot as a candidate for County Commissioner Precinct Four of El Paso County, Texas, so that voters will have the right to hear from the plaintiff as a candidate in the democratic primary, and to vote for him in all future primary elections.

I. That this Court issue a temporary restraining order directed to the Chairman of the El Paso County Democratic Executive Committee requiring him to certify to and file with the El Paso, Texas County Clerk, the plaintiff's name as a candidate for County Commissioner Precinct Four, El Paso County, Texas, and to place plaintiff's name on the official ballot for the

Democratic general primary set for May 2, 1970 without the payment of his assessment of $1,424.60 in order to prevent irreparable damage to plaintiff and class plaintiffs and that such hearing and ruling be had by February 19, 1970.

J. That the plaintiffs have the cost of their action against any defendant hereto and that plaintiffs have such other and further relief as to the Court shall seem just and proper.

Plaintiffs will amend their complaint so as to add any other party defendants or party plaintiffs as may be necessary and proper, and to allege other facts and seek other relief as the facts and the law may warrant.

Respectfully submitted,
CALAMIA & FASHING
(Signature)
JOHN L. FASHING
(Signature)
WILLIAM PATE

(Affidavit omitted in printing)

(Certificate of Service omitted in printing)

EXHIBIT "A"

ASSESSMENTS OF CANDIDATES FOR DEMOCRATIC PRIMARY
EL PASO COUNTY
MAY 2, 1970

1. All indicated salaries are those which will be paid in 1970, assuming the present pay scale is maintained, except that the indicated salaries of Justices of the Peace are those paid to each by the County of El Paso during 1969.

2. Except for representatives to the legislature whose filing fees of $150.00 are fixed by the Election Code, the assessment for each office is 17% of the assessed salary.

Office	Salary	Assessed Salary	Assessment
County Clerk	$14,400.00	$14,400.00	$2,448.00
County Treasurer	9,600.00	9,600.00	1,632.00
County Surveyor	None	None	None
County Courts at Law	14,400.00	14,400.00	2,448.00
County Judge	14,400.00	14,400.00	2,448.00
County Commissioner	8,380.00	8,380.00	1,424.60
34th District Court	23,900.00	3,984.00	677.28
Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2.			
120th District Court	23,900.00	23,900.00	4,063.00
171st District Court	23,900.00	23,900.00	4,063.00
168th District Court	23,900.00	23,900.00	4,063.00
District Attorney	17,500.00	2,917.00	495.89
Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2.			
District Clerk	14,400.00	14,400.00	2,448.00
Justices of the Peace:			
Precinct 1, Place 2	9,600.00	9,600.00	1,632.00
Precinct 2	8,622.00	8,622.00	1,465.74
Precinct 3	7,991.00	7,991.00	1,358.47
Precinct 4	4,067.00	4,067.00	691.39
Precinct 5	6,792.00	6,792.00	1,154.64
Precinct 6	5,801.00	5,801.00	986.17
Precinct 7	22,720.00	22,720.00	3,862.40
Precinct 8	10,926.00	10,926.00	1,857.42
U. S. Representative 16th Congressional District	42,500.00	3,864.00	656.88
Note: This office covers 11 Counties. For assessment the salary is divided by 11.			

EXHIBIT "B"

EL PASO COUNTY
DEMOCRATIC PARTY
508 Southwest Bank Building
EL PASO, TEXAS 79901
Telephone 533-6622

February 10, 1970

Mr. William (Bill) Pate
8705 Marble Drive
El Paso, Texas

Dear Mr. Pate:

You are advised that the County Democratic Executive Committee has established a filing fee for the office of County Commissioner, Pct. 4 in the amount of $1,424.60.

In order to insure your position on the ballot, it will be necessary

to pay your assessment on or before February 28, 1970, at this office. Since your original deposit was $50.00, the amount that must be paid is $1,874,60.

Sincerely,
DEMOCRATIC HEADQUARTERS
George A. Mc Almon
County Chairman

Note: Please use cash, certified check or money order.

EXHIBIT "C"

A search of the statutes of the fifty states reveals that at least thirty-four states have provisions providing the payment of some fee before the candidates name can be placed on the ballot in the ballot in the general election. Although most of these provisions relate to primary elections, the effect is to preclude access to the general election ballot since nomination by primary is generally prerequisite to candidacy in the general election, e.g., Hawaii gen. Laws, Ch. 11, para. 91 (Supp. 1963); Minn. Stat. Ann. para. 202.02 (Supp. 1969); or a candidate to run in the general election as a member of a political party must be nominated by primary, e.g., Pa. Stat. Ann. para. 25-2862 (1963). This Appendix sets out the provisions in the states with reference to primary and general elections, and, in some instances, nominating petitions. It illustrates how high in proportion to such offices as United States Senator or Governor the fees the El Paso County Democratic Primary are for County and District Offices.

FILING FEES FOR PRIMARIES AND GENERAL ELECTIONS OF THE FIFTY STATES DERIVED FROM STATE CODES.

State	Office	Fee	Source
Alabama	Any person	Any assessment that may be required to be paid of him	Code Ala. Tit. 17, §348 (1958)
Alaska (primary)	Governor	$100.00	Alas. Stat. Tit. 15, §15.25.50 (1962)
	Secretary of State	$100.00	
	U. S. Senator	$100.00	
	U. S. Representative	$100.00	
	State Senator	$ 30.00	
	State Representative	$ 30.00	
Arizona	A search of the statutes revealed no state-wide legislation with respect to fees		
Arkansas	Candidates file certificates of nomination		Ark. Stat Ann. §3-261(g) (Supp. 1967)
	state-wide offices voted on by more than one district	$ .50 for each certificate $ 3.00	
	U. S. Representative	$10.00	
	in single county	$ 3.00	
	in township	$ 1.00	
	in incorporated town or city	$ 1.00	
California (declaration of candidacy in primary)	U. S. Senator	Two percent first year salary	Elec. Code Ann. §6552(a) (Deering Supp. 1969)

	State Office except State Senator or Assemblyman or Office to be voted for in a district comprising more than one county.	Two percent first year salary	Id.
	U. S. Representative	One percent first year salary	Id. §6552(b)
	Any office to be voted for in a district comprising more than one county, except State Senator or Assemblyman.	One percent first year salary	Id.
	State Senator or Assemblyman	One percent first year salary	Id. §6552(c)
	Offices to be voted for wholly within one county except	$ 10.00	Elec. Code Ann. §6554 (Deering 1961)
	No fee required from any candidate for an office for which no fixed compensation is payable		Id. §6554(b)
	No fee required for office for which compensation does not exceed $600.		Id. §6554(c)
	Judicial Office	One percent annual salary	Id. §6554(d)
	County Office, salary of more than $2500	Two percent annual salary	Id. §6554(e)
Write-in Candidate	When person hasn't filed declaration of candidacy and is nominated by having his name written on the ballot, he shall pay same fee that would have been required had his declaration been filed		Id. §6555
Colorado	Apparently no fees		
Connecticut	All offices	Five percent annual salary	Gen. Stat. Conn. Tit. 9, §400 (1958)
persons other than party-endorsed nominees	except Probate Judge State Senator	$ 50.00 $ 25.00	
Delaware	Apparently no fees		
Florida	All offices	Three percent annual salary; not less than $180 for any state or legislative office	Fla. Stat. Ann. Tit. IX, §99.092 (Supp. 1969)

Georgia (general and special elections)	County Office militia district office State House of Representatives	Set by governing authority of county; "reasonable"	Ga. Code Ann. §34-1004 (Supp. 1968)
	Federal or State Office	Set by Secretary of State; "reasonable"	Id.
	Municipal Offices	Set by governing authority of municipality	Id. §34A-904
Hawaii (primary)	Congressional, state or county office	$ 10.00	Hawaii Gen. Laws Ch. 11, §97 (Supp. 1963)
Idaho (nominating election)	Salary $300 or less per annum	$ 2.00	Idaho Code §34-608
	Salary greater than $300 per annum	One percent on excess	Id.
Illinois	Apparently no fee		
Indiana	Apparently no fee		
Iowa	Apparently no fee		
Kansas	In lieu of nomination papers		
	U. S. Senator	One percent annual salary	Kan. Stat. Ann. §25-206 (Supp. 1968)
	U. S. Representative	Same	Id.
	All state offices county offices with salary greater than $1,000.	Same	Id.
	County offices with salary less than $1,000.	$ 5.00	Id.
	State Senator	$ 10.00	Id.
	State Representative	$ 5.00	Id.
	Township Trustee	$ 1.00	Id.
	All othe township	$ .50	Id.
	Presidential Electors	$ 10.00	Id.
Kentucky (primary)	All notification and declaration filed for primary	$ 1.00	Ky. Rev. Stat. §119.250 (1962)
Louisiana (primary)	U. S. Senator	$100.00	La. Rev. Stat. §18:310A (1969)
	U. S. Representative	$100.00	
	Governor	$100.00	Id.
	Justice of Supreme Court	$100.00	Id.
	Judge of Court of Appeals	$100.00	Id.
	Member, Public Service Commission	$100.00	Id.

	All state officers voted for throughout a congressional district, public service commission district, supreme court district, court of appeal district, all candidates for membership on any state board or commission, all candidates for any office of state character whose election is provided for by law	$100.00	Id.
	District or parish office	$ 5.00	Id. §18:311A
	Ward office	$ 1.00	Id.
	Municipal office	Not more than $100.00	Id. §18:311E
	Any office in municipality of more than 300,000 except Orleans Parish School Board	$5000.00	Id. §18:592
Maine	Apparently no fee		
Maryland	Governor	$290.00	Am. Code Md. Art. 33 §4A-6(b) (Supp. 1968)
	Comptroller	$290.00	Id.
	Attorney General	$290.00	Id.
	U. S. Senator	$100.00	Id. §4A-6(c)
	U. S. Representative	$ 25.00 for each county or legislative district of Baltimore City where name on ballot	Id. §4A-6(a)
	other state officers each candidate except as otherwise provided	$ 10.00	Id.
	County offices paying less than $300	$ 50.00	Id. §4A-6(d)
	State Senator		Id. §4A-6(e)
	Candidates nominated by primary meeting and petition must pay the fee in accordance with the foregoing conditions		
Massachusetts	Apparently no fee		
Michigan	Filing fee in lieu of nominating petition		
	State Senator	$100.00	Mich. Stat. Ann. §6.1163 (Supp. 1969)
	State Representative	$100.00	Id. §6.1198
	Prosecuting Attorney, County	$100.00	Id.
	Sheriff	$100.00	Id.
	County Clerk	$100.00	Id.
	County Treasurer	$100.00	Id.
	Register of Deeds	$100.00	Id.
	Drain Commissioner	$100.00	Id.
	Coroners	$100.00	Id.
	Surveyor	$100.00	Id.
	County Auditor	$100.00	Id. §6.1254

	County Road Commissioner	$100.00	Id. §6.1224
	n.b. All of the foregoing sections contain provisions that the $100.00, shall be returned to all candidates nominated and to a like number of candidates who are next highest		
	Judge, Municipal Court of Record	$100.00 (no provision for return)	Id. §6.1426(4)
Minnesota (primary)	U. S. Senator	$150.00	Minn. Stat. Ann.
	Governor	$100.00	§202.05 (Supp. 1969)
	Lt. Governor	$100.00	Id.
	Secretary of State	$100.00	Id.
	State Auditor	$100.00	Id.
	Railroad Commissioner	$100.00	Id.
	Judge, Supreme Court	$100.00	Id.
	Judge, District Court	$100.00	Id.
	U. S. Representative	$100.00	Id.
	State Legislature	$ 20.00	Id.
	County Office	$ 20.00	Id.
Mississippi (primary)	U. S. Senator	not to exceed $300.00	Miss. Code Ann. Tit. 14, §3120 (Supp. 1968)
	Governor	not to exceed $300.00	Id.
	U. S. Representative	not to exceed $200.00	Id.
	Major State-wide Offices	not to exceed $200.00	Id.
	Circuit Judge	not to exceed $100.00	Id.
	Chancellor	not to exceed $100.00	
	District Attorney	not to exceed $100.00	Id.
	State Legislator	not to exceed $ 15.00	Id.
	Major county offices	not to exceed $ 15.00	Id.
	Minor county offices	not to exceed $ 10.00	Id.
Missouri (primary)	State-wide office	$100.00	Mo. Stat. Ann.
	Member of Congress	$ 50.00	§120.350 (1966)
	Circuit Judge	$ 50.00	Id.
	State Senator	$ 50.00	Id.
	State Representative	$ 25.00	Id.
	Officers in first class cities	$ 10.00	Id. §74.060
	St. Louis City Officers	2%-one year's salary	Id. §122.710
Montana	Mayor, commission form of government	$ 20.00	Rev. Code Mont. §11-3115 (1968)
	Councilman, commission form of government	$ 15.00	Id.
	Primary offices having salary $1,000 or less except	$100.00	Id. §23-3304 (Supp. 1969)

	Legislature or Lt. Gov.	$ 15.00	Id.
	Offices having salary greater than $1,000	One percent of salary	Id.
	County Commissioners		Id.
	Counties 1st Class	$ 40.00	Id.
	Counties 2nd Class	$ 35.00	
	Counties 3rd Class	$ 30.00	Id.
	Counties 4th Class	$ 25.00	Id.
	Other counties	$ 10.00	Id.
	Offices with compensation in fees	$ 5.00	Id.
Nebraska (primary)	U. S. Senator	One percent annual salary	Rev. Stat. Neb. §32-513 (Supp. 1967)
	U. S. Representative	Same	Id.
	State Officers	Same	Id.
	County Officers	Same	Id.
	Directors Public power, irrigation, reclamation districts	If salary greater than $1,000, $25; If less than $1,000, $10	Id.
	City offices	$ 5.00	Id.
	Delegate National Convention	$ 25.00	Id.
	Alternate Delegate national convention	$ 15.00	Id.
Nevada (primary)	U. S. Senator	$250.00	Nev. Rev. Stat. §293.193 (1967)
	U. S. Representative	$150.00	Id.
	Governor	$150.00	Id.
	Supreme Court Justice	$150.00	Id.
	Other state offices	$100.00	Id.
	Any district office	$ 75.00	Id.
	Any county office	$ 40.00	Id.
	State Senator	$ 30.00	Id.
	Assemblyman	$ 15.00	Id.
	Justice of the Peace	$ 10.00	Id.
	Constable	$ 10.00	Id.
	Other town or township offices	$ 10.00	Id.
	Fees-in-city-of-first or second class set by city clerk		Id.
New Hampshire (primary)	U. S. Senator	$100.00	N. H. Rev. Stat. Ann. Tit. IV, §56.14 (1955)
	Governor	$100.00	Id.
	U. S. Representative	$ 50.00	Id.
	Other state officers	$ 50.00	Id.
	Councilor	$ 25.00	Id.
	State Senator	$ 10.00	Id.
	County officer	$ 5.00	Id.
	State Representative	$ 2.00	Id.
	Ward officers	$ 1.00	Id.

New Jersey	Apparently no fees		
New Mexico (primary)	All except City Officers receiving salary	Six percent first year's salary	New Mex. Stat. Ann. §§3-11-8.1,3-11-2.3 (Supp. 1967)
	Lt. Governor	$400.00	New Mex. Stat. Ann. §3-11-8.1
	Legislator	$ 50.00	Id.
	Justice of the Peace	$ 50.00	Id.
	Constable	$ 20.00	Id.
	County Surveyor	$ 20.00	Id.
New York	Apparently no state-wide fees		
North Carolina (primary)	Governor	One percent annual salary	Gen. Stat. N. C. §163-107 (Supp. 1967)
	All state executive offices	Same	Id.
	Lt. Governor	Same	Id.
	Justices of Supreme Court	Same	Id.
	Judges, Superior Courts	Same	Id.
	Judges, District Courts	Same	Id.
	Solicitors	Same	Id.
	U. S. Senator	Same	Id.
	U. S. Representative	Same	Id.
	State Senator	Same	Id.
	State Representative	Same	Id.
	All county offices not compensated by fees	Same	Id.
	All township offices not compensated by fees	Same	Id.
	County Commissioners, if compensated entirely by fees	$ 10.00	Id.
	Members of County Board of Education, if compensated entirely by fees	$ 5.00	Id.
	Sheriff, if compensated entirely by fees	$ 40.00, plus 1% of income of office over $4,000	Id.
	Clerk of Superior Court if compensated entirely by fees	Same	Id.
	Register of Deeds, if compensated entirely by fees	Same	Id.
	Any other county office if compensated entirely by fees	$ 20.00, plus 1% of income of office over $2,000	Id.
	Constable, if compensated entirely by fees	Same	Id.
	Justice of the Peace, if compensated entirely by fees	$ 10.00, plus 1% of income above $1,000	Id.
	All county and township offices compensated partly by salary and partly by fees	1% of first annual salary to be received exclusive of fees	Id.

North Dakota	Apparently no fees		
Ohio (primary)	All offices	One half of one percent annual salary, not less than $1. or more than $50.	Ohio Rev. Code Ann. §3513.10 (1960)
	Statement of candidacy and nominating petition All offices	Same	Id. §3513.261 (Supp. 1968)
Oklahoma	Apparently no fees		
Oregon (primary)	U. S. Senator	$150.00	Ore. Rev. Stat. §249.271 (1967)
	U. S. Representative	$100.00	Id.
	Offices State at Large	$100.00	Id.
	Circuit Court Judge	$ 50.00	Id.
	County offices	$ 20.00	Id.
	State Legislature	$ 10.00	Id.
	National Committeeman	$ 15.00	Id.
	District Officer in County	$ 5.00	Id.
Pennsylvania (nominating petition)	U. S. President or any public office to be filled by electors of state at large	$ 50.00	Pa. Stat. Ann. §25-2873 (1963)
	U. S. Congress	$ 35.00	Id.
	Judge, Court of Record, excepting judges elected by state at large	$ 35.00	Id.
	Associate Judge	$ 35.00	Id.
	State Legislator	$ 25.00	Id.
	County office, other than jury commissioner, associate judge, prison inspector or county auditor in counties of the eighth class	$ 25.00	Id.
	Jury Commissioner	$ 10.00	Id.
	Associate Judge	$ 10.00	Id.
	County Auditor, counties of the eighth class	$ 5.00	Id.
	Prison Inspector	$ 2.00	Id.
	District Councilman, first class cities	$ 25.00	Id.
	Offices to be filled by electors if entire city:		
	First or second class city	$ 25.00	Id.
	City of Second Class A	$ 15.00	Id.
	City of Third Class	$ 10.00	Id.
	Borough, town, township of first class, school district or poor district office not otherwise provided for	$ 2.00	Id.
	Delegate or Alternate Delegate to National party convention	$ 10.00	Id.

	Member of National or State Committee	$ 10.00	Id.
	Alderman	$ 2.00	Id.
	Justice of the Peace	$ 2.00	Id.
	Constable	$ 2.00	Id.
	Township Auditor	$ 1.00	Id.
	Road Supervisor	$ 1.00	Id.
Rhode Island	Apparently no fee		
South Carolina	The amounts of assessments to be paid candidates at the time of the filing of the notice of candidacy shall be fixed as to each office by State or County Committee, as the case may be, with whom the notice and pledge has to be filed hereunder for such office		Code S. C. §23-400.74 (Supp. 1968)
South Dakota	Apparently no fee		
Tennessee	Apparently no fee		
Texas (primary)	Any precinct, county or district office in counties with population of one million or more, except State Legislature and State Board of Education	Not to exceed 10% aggregate annual salary provided for any office of two year terms, and 15% aggregate annual salary for any office of four year terms.	Ann. Tex. Stat. Election Code Art. 13.08a (1967)
	State Representative from county one-million population or more	Not in excess of $500.00	Id.
	State Senator from county one million population or more	$1,000.00	Id.
	State Senator or Representative from county, population 900,000 to 1,000,000	$ 300.00	Id.
	State Senator or Representative from county, population 650,000 to 900,000	$ 500.00	Id.
	State Representative from District consisting of eight and not more than nine counties	$ 25.00	Id.
	State Senator or Representative from county, population 350,000 to 640,000	$ 300.00	Id. Art. 13.08a-1
	State Board of Education	$ 50.00	Id. Art. 13.08
Utah (Direct primary)	State, county offices	One fourth of 1% of total salary for full term but not less than $5	Utah Code Ann. §20-3-14 (1969)
	All precinct offices	$ 1.00	Id.
Vermont	Apparently no fee		

Virginia (primary)	Every candidate for any office at any primary shall, before he files his declaration of candidacy pay a fee equal to two percentum of one year's salary attached to the office for which he is candidate		Code of Virginia §24-398 (1969)
Washington (primary)	Office with annual salary more than $1,000	One per cent annual salary	Rev. Code Wash. §29.18.050 (1965)
	Office with annual salary less than $1,000	$ 10.00	Id.
	Precinct Office without salary	$ 1.00	Id.
West Virginia (primary)	U. S. President	One percent annual salary	W. Va. Code §3-5-8(a) (1966)
	U. S. Vice President	Same	Id.
	U. S. Senator	Same	Id.
	U. S. Representative	Same	Id.
	Governor	Same	Id.
	All othe state elective offices	Same	Id.
	Judge, Circuit Court	One percent of total annual salary of the office paid from any and all sources for which he announces	Id. §3-5-8(b)
	Judge any court of record of limited jurisdiction	Same	Id.
	House of Delegates	$ 15.00	Id. §3-5-8-(c)
	State Senator	$ 30.00	Id.
	Sheriff	One percent annual salary not less than $5.00	Id. §3-5-8(d)
	Prosecuting Attorney	Same	Id.
	Circuit Clerk	Same	Id.
	County Clerk	Same	Id.
	Assessor	Same	Id.
	Member County Court	Same	Id.
	County Board of Education	Same	Id.
	Any other county office	Same	Id.
	Justice of the Peace, district population 5,000 or less	$ 10.00	Id. §3-5-8(e)
	Justice of the Peace, district population 5,000-25,000	$ 15.00	Id.
	Justice of the Peace, district population over 25,000	$ 25.00	Id.
	Constable, district population 5;000 or less	$ 5.00	Id. §3-5-8(f)
	Constable, district population 5,000-25,000	$ 10.00	Id.
	Constable, all other districts	$ 15.00	Id.
	Delegates-at-large National Convention	$ 20.00	Id. §3-5-8(g)
	Delegates from congressional district, National Convention	$ 10.00	Id.

	Party State Executive Committee	$ 10.00	Id. §3-5-8(h)
	Party County Executive Committee	$ 1.00	Id.
	Member Congressional Senatorial or Delegate District Committee	$ 1.00	Id.
Wisconsin	Apparently no fee		
Wyoming			
Petition for nomination			
	electors wholly within one county	$ 10.00	Wyo. Stat. §22-118.13 (Supp. 1969)
	Whole state or area larger than one county	$ 20.00	Id.
Application for nomination by primary			
	electors wholly within one county	$ 10.00	Id. §22-118.16
	Whole state or area larger than one county	$ 20.00	Id.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DISTRICT

CIVIL ACTION NO. 4-1367

(Title omitted in prniting)

PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION

1. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343(3). This is a class action on behalf of the plaintiff and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee, which deprives the plaintiff and other members of the class to which he belongs of rights, privileges, and immunities secured by the Constitution of the United States. This is an action for declaratory judgment initiated pursuant to 28 U.S.C. 2201 and 2202.

2. A three-judge court is being requested, pursuant to 28 U.S.C. 2281 and 2284.

3. This is a lawsuit challenging the constitutionality of the "Rich Man's Primary" in Texas, a device, scheme, or subterfuge designed to eliminate "nuisance candidates" (Campbell v. Davenport, 1966, 362 F. 2d 624) who cannot afford to buy their way on to the primary ballot by the payment of substantial qualifying fees beyond the financial ability of the average citizen who may aspire to public office.

4. The plaintiff, Theodore H. Wischkameper, is a resident citizen and qualified voter of the City of Fort Worth, Tarrant County, Texas, who meets the qualifications for the office of County Judge set forth in Art. 5, Sec. 15, of the State of Texas, which provides

merely that "he shall be learned in the law of the State." On December 15, 1969, plaintiff timely filed his formal application with the Chairman of the Tarrant County Democratice Executive Committee to be a candidate for the office of County Judge of Tarrant County, Texas, in the Democratic Primary Elections to be held on May 2, 1970, and June 6, 1970.

5. The original defendant in this lawsuit was Robert L. Wright, who was sued in his representative capacity as Chairman of the Tarrant County Democratic Executive Committee on December 15, 1969; the citation, or summons, was served on December 17, 1969, ". . . by delivering a copy of this summons along with the complaint to Mr. Robert L. Wright, personally, as Chairman of the Tarrant County Democratic Executive Committee. . . ." The original defendant filed an answer on January 7, 1970, alleging that he was no longer Chairman of said Committee and had not been sued in his individual capacity. The present Chairman of the Tarrant County Democratic Executive Committee is Dr. J. D. Tomme, Jr. On January 12, 1970, plaintiff filed a motion to have Dr. Tomme served with citation, but the Court has not acted on this motion to date; Dr. Tomme has been furnished with copies of all of plaintiff's pleadings as they were filed.

6. The defendant, Dr. J. D. Tomme, Jr., and his successors in office, in the event of other resignations, as Chairman of the Tarrant County Democratic Executive Committee, is the officer authorized by law to accept qualifying fees from candidates for the various local offices whose names will appear on the ballot in the 1970 Democratice Primaries.

7. The plaintiff is informed and believes that the Tarrant County Democratic Executive Committee have enacted a resolution which imposes a qualifying fee

of $6,300.00 for candidates for the office of County Judge in the 1970 Democratic Primaries, and various other qualifying fees too numerous to set forth in this pleading, which range from $50.00 for some offices, up to the incredible figure of $8,900.00 for other offices! Said figures have been assessed mainly on the basis of eight per cent of the salary for the full term of office, which would amount to sixteen per cent of one year's salary for two-year offices, and thirty-two per cent of one year's salary for four-year offices.

8. The plaintiff is further informed and believes that under said resolution of the Tarrant County Democratic Executive Committee imposing exorbitant qualifying fees on candidates for office in the Democratic Primaries to be held on May 2, 1970, and June 6, 1970, persons, who, by reason of their poverty are unable to pay said qualifying fees will not be certified by the defendant Chairman of the Tarrant County Democratic Committee, or his successors in office if he decides to resign, as having qualified, and their names will not appear on the ballot for the Democratic Primaries.

9. The qualifying fees which have been set by the resolution complained of are unreasonable, exorbitant, prohibitive, and bear no reasonable relation to any legitimate legislative purpose, said fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to buy their way on to the ballot.

10. In setting qualifying fees at such an unreasonable and outrageously high level, the said Tarrant County Democratic Executive Committee, deprives the plaintiff and all other persons similarly situated of rights, privileges, and immunities secured to them by

the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

11. Although the primary machinery was originally the private affair of the party, it has become absorbed by the State, which has exercised its authority over primary elections with the rules and regulations laid down in cumbersome detail. The party committees are so much controlled by State authority that they are without power to vary on their own initiative the qualifications prescribed for voters, candidates or committee members. Nixon v. Condon, 286 U. S. 73.

12. Art. 13.08 of the Texas Election Code authorizes the County Executive Committees of the various political parties to carefully apportion the costs of the primaries among the candidates. "In making the assessment upon any candidate," the statute says, "the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is made." Art. 13.08a limits the qualifying fees in certain counties, to ten per cent of one year's salary for two-year offices and fifteen per cent of one year's salary for four-year offices, a legislative ceiling which should apply uniformly throughout the State, under the equal protection clause of the Fourteenth Amendment.

13. The qualifying fees adopted throughout Texas, for the 1970 Democratic Primary Elections, are so notoriously unequal that they are discriminatory on their face. For instance, the qualifying fee for District Judge in Harris County is $3,900.00, in Dallas County it is $6,720.00, and in Tarrant County it is $8,900.00. Further, the qualifying fees for candidates for the office of County Judge in five neighboring counties are as follows: Denton County, seven per cent of one year's

salary, or $770.00; Ellis County, eight per cent of one year's pay, or $800.00; Parker County, ten per cent of one year's salary, or $970.00; Dallas County, twenty-four per cent of one year's salary, or $5,760.00; and Tarrant County, thirty-two per cent of one year's salary, or $$6,300.00. As Mr. Justice Matthews said, in Yick Wo v. Hopkins, 118 U. S. 356: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

14. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

15. Under the Texas statutes, voters wanting as a candidate a man, such as plaintiff, who is unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unstitutional burden on the voters; the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

16. Plaintiff alleges that there is a clear and imminent threat of irreparable injury amounting to manifest oppression in the event the Federal Courts fail to protect him and others similarly situated from a schedule or system of filing fees so arbitrary, so ca-

pricious, and so discriminatory as to be substantially lacking in safeguards of a procedural nature.

Wherefore, premises considered, plaintiff prays that this Honorable Court issue its immediate temporary restraining order, restraining defendant, Dr. J. D. Tomme, Jr. (and his successors in office if he resigns), as Chairman of the Tarrant County Democratic Executive Committee from determining by lot the order of candidate's names on the ballot, on March 16, 1970 (per Art. 13.17a) or from making up the ballot for the first primary (per Art. 13.14) on March 23, 1970, or from enforcing in any manner the schedule of filing fees herein complained of as violating plaintiff's constitutional rights, privileges and immunities, pending a hearing on an interlocutory injunction before a three-judge court. Plaintiff further prays that a three-judge court be expeditiously convened, so that the interlocutory injunction request and the lawsuit on the merits may be heard and considered with all due speed; and so that the questions involved herein may be resolved, by appeal to the United States Supreme Court if necessary, in advance of the primary elections on May 2, 1970 (see Gong v. Kirk, 1967, 375 F. 2d 728); and that pending a hearing on the merits an interlocutory injunction be granted, suspending or restraining the enforcement, operation, or execution of any statute of the State of Texas, or any resolutions of the Tarrant County Democratic Executive Committee, imposing a property qualification in the form of a filing fee as an unconstitutional precondition to candidacy for public office for plaintiff and others similarly situated; and that upon final hearing hereof, a permanent injunction issue permanently enjoining the imposition of a property qualification in the form of a filing fee as a precondition to candidacy for public office for plaintiff and other similarly situated. Pending the

final determnation of this lawsuit, plaintiff especially prays that he, and others similarly situated, be temporarily relieved from the payment of any qualifying fees, or filing fees, and that the time for filing notice of candidacy be extended, since the constitutional question involved is a substantial one, which may require the decision of the entire United States Supreme Court. Matthews v. Little, 1969, 24 L. Ed. 2d 45.

March 13, 1970.

Respectfully submitted,

(Signature)
A. L. Crouch,
Attorney for Plaintiff

(Verification omitted in printing.)

(Certificate of Service omitted in printing.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DISTRICT

CIVIL ACTION NO. 4-1367

(Title omitted in printing)

PLEA IN INTERVENTION

Comes now Reubin Jenkins, hereinafter styled intervenor, and would respectfully show unto the Court the following:

1. Intervenor is a resident citizen, taxpayer, qualified voter, and duly elected Democratice Precinct Chairman of Election Precinct Number 93, of Fort Worth, Tarrant County, Texas.

2. The jurisdiction of this court is invoked pursuant to 42 U.S.C. 1983 and U.S.C. 1343(3). This is a class action, within the scope of Rule 23 of the Federal Rules of Civil Procedure, on behalf of intervenor and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee which deprives intervenor and other members of the class or classes to which he belongs of rights, privileges and immunities secured by the Constitution of the United States of America.

3. This is an action for a declaratory judgment initiated pursuant to 28 U.S.C. 2201 and U.S.C. 2202. A three-judge district court is being requested, as provided in U.S.C. 1973, from which an appeal will lie directly to the United States Supreme Court.

4. The plaintiff in this lawsuit is Theodore H. Wischkaemper, a resident of Fort Worth, Tarrant County, Texas, who has timely filed his application to

be a candidate for the office of County Judge of said County in the Democratic Primary Election set by law for May 2, 1970.

5. The defendant in this lawsuit is the Hon. Robert L. Wright, Chairman of the Tarrant County Democratic Executive Committee, and his successors in office. The Chairman of the Tarrant County Democratic Executive Committee is the officer authorized by law to accept qualifying fees, or filing fees, from candidates for the various offices to appear on the ballot in the Democratic Primary Election to be held in Tarrant County, Texas, on May 2, 1970.

6. The plaintiff filed his Original Petition in this lawsuit, pro se, on December 15, 1969; and the Hon. Robert L. Wright, then Chairman of the Tarrant County Democratic Committee, after being duly served with citation on December 17, 1969, filed his Original Answer on or about January 6, 1970.

7. On January 13, 1970, plaintiff filed his "First Amended Petition" in this lawsuit, prose, alleging that "the said Robert L. Wright resigned as Chairman of the Tarrant County Democratic Executive effective January 1, 1970. And that the Honorable Court make as binding on Dr. J. D. Tomme, who assumed that office on Jan. 1, 1970, plaintiff's original petition and citation servised (sic) on Robert L. Wright by the U. S. Marshall's office on December 17, 1969, as though servised (sic) on Dr. J. D. Tomme." Both Robert L. Wright and his successor in office, Dr. J. D. Tomme, have been furnished with copies of both the plaintiff's Original Petition and his "First Amended Petition," according to a certificate signed by the plaintiff at the bottom of the pleading filed on January 13, 1970.

8. Intervenor is informed and believes that the Tarrant County Democratic Executive Committee adopted a schedule of qualifying fees for candidates who want their names to appear on the ballot in the Democratic Primary Election set for May 2, 1970; said fees, ranging in amount from $50.00 to $8,900.00, have been assessed at approximately eight per cent of the total amount of the salary of the office for the entire term. For two-year offices, the assessment would thus be approximately sixteen per cent of one year's pay; and for four-year offices, such as County Judge, the assessment would be approximately thirty-two per cent of one year's pay. The fee actually assessed for the office of County Judge is $6,300.00, an amount which plaintiff was unable to pay.

9. The schedule of qualifying fees which defendant, Dr. J. D. Tomme, is attempting to enforce are exorbitant, excessive, and unreasonable, and bear no relationship to any legitimate legislative purpose, such fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay the fees demanded.

10. The intervenor is informed and believes that plaintiff and other persons, who, by reason of their financial condition or outright poverty, are unable to pay such exorbitant qualifying fees will not be permitted to participate in the drawing for places on the ballot, set by Art. 13.17a for March 16, 1970, by the defendant, Dr. J. D. Tomme.

11. The intervenor is also informed and believes that the said defendant, Dr. J. D. Tomme, will not certify the names of those candidates who are unable to pay said exorbitant qualifying fees to the primary committee, when it meets on March 23, 1970, to make up the ballot for the May 2, 1970, primary, pursuant to

Art. 13.14; and that said committee will actually leave the names of such persons, including the plaintiff, from the official ballot to be used in said primary election.

12. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

13. Under the Texas statute, voters wanting as a candidate a man, such as plaintiff, who is unwilling or unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unconstitutional burden on the voters. Intervenor hereby asserts that the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

14. In States such as Texas, where the primary election is in a real sense the only true election, the vote at the final election is merely a formal flourish, except in rare cases. It is common knowledge that whoever receives the Democratic nomination to an office in Tarrant County, Texas, is elected to the office in the General Election. Sixty candidates for the May 2 Democratic primary have paid filing fees for 39 positions, while only 9 Republican candidates have paid filing fees for 8 positions in the Republican primary. There is no Republican seeking the office of County Judge in Tarrant County this year, so that the Democratic nomination for the office which plaintiff seeks is tantamount to election.

15. Intervenor believes that his vote has been impaired, lessened, diminished, diluted, and destroyed by the fact that his choice on the primary ballot (and thereby the election itself) is limited to those who are willing and able to pay an exorbitant and prohibitive qualifying fee; and that he has been denied his constitutional right to participate in the elective processes by reason of the fact that defendant, Dr. J. D. Tomme, is attempting to enforce an unconstitutional property qualification on candidates for public office in the Democratic Primary Election, which is an integral part of the procedure for electing public officials in Texas.

16. Texas has delegated its function of conducting primaries to the political parties, and in this respect the party's action is the action of the State.

17. The pertinent provisions of the Texas Election Code have been amended by the Texas Legislature since November 1, 1964, or have been reenacted since that date. The resolution of the Tarrant County Democratic Executive Committee, adopting the schedule of qualifying fees herein complained of, was adopted on February 9, 1970.

18. A qualifying fee for the office of County Judge is contrary to and in violation of the Constitution of the State of Texas, in that it requires from plaintiff, as a candidate for said office, a property qualification (i.e., possession of $6,300.00 in cash) in addition to the qualification set forth in the State Constitution, Art. 5, Sec. 15, which provides merely that "he shall be learned in the law of the State."

19. In addition to plaintiff, there are at least three other candidates who are being denied a place on the Democratic Primary ballots because of their inability

to pay qualifying fees; Van Phillip Carter, candidate for State Land Commissioner ($1,000.00 fee); and Mrs. Vernon R. "Dick" Winters and Pearce Scott, the only two candidates who filed for Public Weigher ($50.00 fee). Candidates for Public Weigher are customarily not assessed a filing fee in Tarrant County, because the job carries no salary. But Mr. Scott is a Negro. Enough said. No filing fee, no public weigher.

20. Intervenor is informed and believes that the schedule of Tarrant County qualifying fees was not prepared in the statutory manner, even though statutes relating to the financing of primaries must be carefully construed and strictly followed. The expenses, instead of being carefully estimated and apportioned by the entire Tarrant County Democratic Executive Committee, "in such manner as in their judgment is just and equitable," as contemplated by Art. 13.07a and 13.08 of the Texas Election Code, were actually estimated and apportioned by a clandestine illegal committee of three intruders, who wrongfully attempted to usurp the discretionary judicial functions of the entire Tarrant County Democratic Executive Committee of more than one hundred and fifty members duly elected by the voters of Tarrant County in the various voting precincts. The attempt of the Tarrant County Democratic Executive Committee to ratify the ultra vires act of the committee of intruders was ineffective and void. It is now impossible for the Tarrant County Democratic Executive Committee to reconvene and estimate and apportion the expenses of the election on the second Monday in February, since that date is already passed; and that, therefore, no legal schedule of filing fees has ever been adopted for Tarrant County for the 1970 Democratic Primary Election; so that, no matter what the courts decide as to the legality or constitution-

ality of qualifying fees for the rest of the State, all filing fees, or qualifying fees for Tarrant County for the year are null and void under State law, as well as under the State and Federal Constitutions, and should be so held by the courts.

21. Intervenor is informed and believes that the sums of money demanded and received by the present Chairman of the Tarrant County Democratic Executive Committee of candidates desiring a place on the ballot in the party primaries are grossly in excess of the amount sufficient to cover the reasonable and necessary expenses involved. It has been customary for said fees to overestimated to such an extent that rebates of up to forty per cent are not uncommon in Tarrant County after the legitimate expenses of the primaries have been paid. As a matter of fact, the County Democratic Chairman has been twice sued by candidates claiming that he has wrongfully and unlawfully expended and kept several thousand dollars and this after substantial rebates! Overassessment of filing fees is a wicked device, which, like the poor, we have with us always.

Wherefore, premises considered, Intervenor prays that a three-judge Federal District Court be impanelled to hear plaintiff's cause of action, together with this Plea in Intervention; and, that pending such hearing and the appeal thereof to the United States Supreme Court, a temporary restraining order, an interlocutory injunction and a permanent injunction, or such of them as may be appropriate, issue enjoining the holding of the Democratic Primary Election now set for May 2, 1970, until such time as defendant J. D. Tomme and other Democratic Party officials afford a reasonable opportunity to apply for positions on the Democratic Primary ballots any and all persons who cannot afford

to pay the qualifying fees which have been demanded as a precondition to candidacy for public office. Intervenor also prays that the drawing for places on the ballot be restrained and enjoined as well; and that injunctive relief be immediately granted, compelling the Democratic Party of Texas and of Tarrant County to refrain from imposing qualifying fees as a condition to filing for public office; and for such other relief in law and in equity to which he may show himself justly entitled.

THEODORE H. WISCHKAEMPER
on behalf of himself
and all others similarly situated,
plaintiff

vs. PLEA IN INTERVENTION

ROBERT L. WRIGHT
Chairman of the Tarrant County
Democratic Executive Committee
and his successors in office

(Verification omitted in printing)

Respectfully submitted,
(Signature)
A. L. CROUCH
Attorney for Intervenor.

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

MOTION FOR CONSOLIDATION OF ABOVE ACTIONS; MOTION TO INTERVENE AS A PLAINTIFF OR CLASS PLAINTIFF; MOTION TO EXPEDITE AND FOR TEMPORARY ORDERS

Come now the Plaintiffs-Intervenors in the above styled and numbered actions and pursuant to 28 U.S.C. 1392 and 1393 and Rules 24 and 42(a) Federal Rules of Civil Procedure, would respectfully show unto the three Judge Court the following:

1. Plaintiff-intervenor WISCHKAEMPER is the Plaintiff in Civil Action Number 4-1367 now pending in the United States District Court for the Northern District of Texas, Fort Worth Division, and a copy of the Complaint therein is attached hereto as Exhibit "A."

2. Plaintiff-Intervenor CARTER is the plaintiff in Civil Action CA 3-3636-C now pending in the United States District Court for the Northern District of Texas, Dallas Division, and a copy of the complaint therein is attached hereto as Exhibit "B."

3. Plaintiff-Intervenor JENKINS has filed a motion to intervene in Civil Action 4-1367 now pending in the United States District Court for the Northern District of Texas, Fort Worth Division, and a copy of said motion is attached hereto as Exhibit "C."

4. Each Plaintiff-Intervenor and Intervenors and class plaintiffs-Intervenors and Class Intervenors are

residents of Texas, qualified voters, taxpayers and putative prospective democratic candidates in present and future Democratic primary elections for certain state, district, county and precinct public offices in Dallas and Tarrant Counties, Texas, and the State of Texas.

5. Plaintiffs move the three Judge Court, pursuant to Rule 42(a) of the Rules of Civil Procedure and 28 USC 1392 and 1393, for an order consolidating the above entitled actions now pending before the three-Judge Court and the District Court for the Northern District of Texas, Dallas and Fort Worth Divisions, into one action on the ground that they involve both common questions of law and facts, and the consolidation will avoid unnecessary costs, duplicity of judicial effort, and delay.

6. Plaintiffs-Intervenors and class intervenors, pursuant to Rule 24 of the Rules of Civil Procedure, move the three-Judge Court for an order permitting them to intervene as plaintiffs in this action and to file a complaint in order to assert the claims in such proposed complaint, a copy of which is hereto attached as Exhibit "D" on the grounds that the issues and questions of law and facts are identical and only the offices involved and the amounts of the fees and assessments differ; that the Plaintiffs-Intervenors are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest; that a failure to consolidate or permit intervention will cause three separate three-Judge Courts to determine identical questions of law and fact which will have a statewide effect over Texas election law; that they have a substantial interest in the subject matter of the action; that their interest and the main action have questions of law and fact in common; that they are qualified voters, taxpayers, putative or pros-

pective democratic candidates in the present and future Democratic primary elections for certain state, district, county, and precinct public offices and are unable to pay the unconstitutional filing fees and assessments for the public office they seek, and that their intervention will not to any extent delay or prejudice the adjudication of the rights of the original parties.

7. The plaintiffs move that their cause and their motions be given precedence, advanced on the docket and assigned for hearing immediately; and that an order be entered immediately, temporarily relieving plaintiffs from payment of the challenged fee and assessments until the three-Judge Court has had an opportunity to pass on all the questions raised. As the time for candidates to draw ballot positions for public offices (Texas Election Code 13.17) is scheduled for March 16, 1970, a necessary consequence to the above requested order is that the defendants should extend the date as set by the Court for candidates to draw ballot positions and to have a redrawing for position on such date. A similar procedure was followed by Justice Black in *Matthews v. Little,* 1969, 24 L. Ed. 2d 45, a copy of the unpublished order, together with a clarification of said order, is attached hereto as Exhibit "E." The time for absentee voting on the candidates begins April 13, 1970 and it is necessary that plaintiffs' names be certified by the defendants as bona fide candidates immediately.

Respectfully submitted,

(Signature)
JOSEPH A. CALAMIA
(Signature)
JOHN L. EASHING
608 S.W. Center
El Paso, Texas

Attorneys for
William Pate, Plaintiff
(Signature)
A. L. CROUCH
Attorney for Theodore
Wischkaemper, Plaintiff
and Reubin Jenkins,
Intervenor
109 N. Taylor Street
Fort Worth, Texas

OF COUNSEL:
A. L. CROUCH
Attorney for Theodore
H. Wischkaemper,
Plaintiff and Reubin
Jenkins, Intervenor
H. AVERIL SWEITZER
Attorney for Van Phillip
Carter, Plaintiff

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CIVIL ACTION NO. 4-1367

(Title omitted in printing)

PLAINTIFF'S THIRD AMENDED ORIGINAL PETITION

1. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. 1983 and 28 U.S.C. 1343(3). This is a class action on behalf of the plaintiff and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee, which deprives the plaintiff and other members of the class to which he belongs of rights, privileges, and immunities secured by the Constitution of the United States. This is an action for declaratory judgment inititiated pursuant to 28 U.S.C. 2201 and 2202.

2. A three-judge court is being requested, pursuant to 28 U.S.C. 2281 and 2284.

3. This is a lawsuit challenging the constitutionality of the "Rich Man's Primary" in Texas, a device, scheme, or subterfuge designed to eliminate "nuisance candidates (Campbell v. Davenport, 1966, 362 F. 2d 624) who cannot afford to buy their way on to the primary ballot by the payment of substantial qualifying fees beyond the financial ability of the average citizen who may aspire to public office.

4. The plaintiff, Theodore H. Wischkaemper, is a resident citizen and qualified voter of the City of Fort Worth, Tarrant County, Texas, who meets the qualifications for the office of County Judge set forth in Art. 5, Sec. 15, of the State of Texas, which provides

merely that "he shall be learned in the law of the State." On December 15, 1969, plaintiff timely filed his formal application with the Chairman of the Tarrant County Democratic Executive Committee to be a candidate for the office of County Judge of Tarrant County, Texas, in the Democratic Primary Elections to be held on May 2, 1970, and June 6, 1970.

5. The original defendant in this lawsuit was Robert L. Wright, who was sued in his representative capacity as Chairman of the Tarrant County Democratic Executive Committee on December 15, 1969; the citation, or summons, was served on December 17, 1969, ". . . by delivering a copy of this summons along with the complaint to Mr. Robert L. Wright, personally, as Chairman of the Tarrant County Democratic Executive Committee. . . ." The original defendant filed an answer on January 7, 1970, alleging that he was no longer Chairman of said Committee and had not been sued in his individual capacity. The present Chairman of the Tarrant County Democratic Executive Committee is Dr. J. D. Tomme, Jr. On January 12, 1970, plaintiff filed a motion to have Dr. Tomme served with citation, but the Court has not acted on this motion to date; Dr. Tomme has been furnished with copies of all of plaintiff's pleadings as they were filed.

6. The defendant, Dr. J. D. Tomme, Jr., and his successors in office, in the event of other resignations, as Chairman of the Tarrant County Democratic Executive Committee, is the officer authorized by law to accept qualifying fees from candidates for the various local offices whose names will appear on the ballot in the 1970 Democratic Primaries.

7. The plaintiff is informed and believes that the Tarrant County Democratic Executive Committee have enacted a resolution which imposes a qualifying fee

of $6,300.00 for candidates for the office of County Judge in the 1970 Democratic Primaries, and various other qualifying fees too numerous to set forth in this pleading, which range from $50.00 for some offices, up to the incredible figure of $8,900.00 for other offices! Said figures have been assessed mainly on the basis of eight per cent of the salary for the full term of office, which would amount to sixteen per cent of one year's salary for two-year offices, and thirty-two per cent of one year's salary for four-year offices.

8. The plaintiff is further informed and believes that under said resolution of the Tarrant County Democratic Executive Committee imposing exorbitant qualifying fees on candidates for office in the Democratic Primaries to be held on May 2, 1970, and June 6, 1970, persons, who, by reason of their poverty are unable to pay said qualifying fees will not be certified by the defendant Chairman of the Tarrant County Democratic Committee, or *his* successors in office if he decides to resign, as having qualified, and their names will not appear on the ballot for the Democratic Primaries.

9. The qualifying fees which have been set by the resolution complained of are unreasonable, exorbitant, prohibitive, and bear no reasonable relation to any legitimate legislative purpose, said fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to buy their way on to the ballot.

10. In setting qualifying fees at such an unreasonable and outrageously high level, the said Tarrant County Democratic Executive Committee, deprives the plaintiff and all other persons similarly situated of rights, privileges, and immunities secured to them by

the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

11. Although the primary machinery was originally the private affair of the party, it has become absorbed by the State, which has exercised its authority over primary elections with the rules and regulations laid down in cumbersome detail. The party committees are so much controlled by State authority that they are without power to vary on their own initiative the qualifications prescribed for voters, candidates or committee members. *Nixon v. Condon,* 286 U. S. 73.

12. Art. 13.08 of the Texas Election Code authorizes the County Executive Committees of the various political parties to carefully apportion the costs of the primaries among the candidates. "In making the assessment upon any candidate," the statute says, "the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is made." Art. 13.08a limits the qualifying fees in certain counties, to ten per cent of one year's salary for two-year offices and fifteen per cent of one year's salary for four-year offices, a legislative ceiling which should apply uniformly throughout the State, under the equal protection clause of the Fourteenth Amendment.

13. The qualifying fees adopted throughout Texas, for the 1970 Democratic Primary Elections, are so notoriously unequal that they are discriminatory on their face. For instance, the qualifying fee for District Judge in Harris County is $3,900.00, in Dallas County it is $6,720.00, and in Tarrant County it is $8,900.00. Further, the qualifying fees for candidates for the office of County Judge in five neighboring counties are as follows: Denton County, seven per cent of one year's salary, or $770.00; Ellis County, eight per cent

of one year's pay, or $800.00; Parker County, ten per cent of one year's salary, or $970.00; Dallas County, twenty-four per cent of one year's salary, or $5,760.00; and Tarrant County, thirty-two per cent of one year's salary, or $6,300.00. As Mr. Justice Matthews said, in *Yick Wo v. Hopkins,* 118 U. S. 356: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similary circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

14. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

15. Under the Texas statutes, voters wanting as a candidate a man, such as plaintiff, who is unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unconstitutional burden on the voters; the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

16. Plaintiff alleges that there is a clear and imminent threat of irreparable injury amounting to manifest oppression in the event the Federal Courts fail to protect him and others similarly situated from a schedule or system of filing fees so arbitrary, so capricious,

and so discriminatory as to be substantially lacking in safeguards of a procedural nature.

Therefore, premises considered, plaintiff prays that this Honorable Court issue its immediate temporary restraining order, restraining defendant, Dr. J. D. Tomme, Jr. (and his successors in office if he resigns), as Chairman of the Tarrant County Democratic Executive Committee from determining by lot the order of candidate's names on the ballot, on March 16, 1970 (per Art. 13.17a) or from making up the ballot for the first primary (per Art. 13.14) on March 23, 1970, or from enforcing in any manner the schedule of filing fees herein complained of as violating plaintiff's constitutional rights, privileges and immunities, pending a hearing on an interlocutory injunction before a three-judge court. Plaintiff further prays that a three-judge court be expeditiously convened, so that the interlocutory injunction request and the lawsuit on the merits may be heard and considered with all due speed; and so that the questions involved herein may be resolved, by appeal to the United States Supreme Court if necessary, in advance of the primary elections on May 2, 1970 (see *Gong v. Kirk,* 1967, 375 F. 2d 728); and that pending a hearing on the merits an interlocutory injunction be granted, suspending or restraining the enforcement, operation, or execution of any statute of the State of Texas, or any resolution of the Tarrant County Democratic Executive Committee, imposing a property qualification in the form of a filing fee as an unconstitutional precondition to candidacy for public office for plaintiff and others similarly situated; and that upon final hearing hereof, a permanent injunction issue permanently enjoining the imposition of a property qualification in the form of a filing fee as a precondition to candidacy for public office for plaintiff

and others similarly situated. Pending the final determination of this lawsuit, plaintiff especially prays that he, and others similarly situated, be temporarily relieved from the payment of any qualifying fees, or filing fees, and that the time for filing notice of candidacy be extended, since the constitutional question involved is a substantial one, which may require the decision of the entire United States Supreme Court. *Matthews v. Little,* 1969, 24 L. Ed. 2d 45.
March 13, 1970.

Respectfully submitted,

(Signature)
A. L. CROUCH
Attorney for Plaintiff

(Verification omitted in printing)

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION CA 3-3635-C

VAN PHILLIP CARTER

vs.

MARTIN DIES JR.
DR. ELMER C. BAUM

PLAINTIFF'S ORIGINAL PETITION

Now comes Van Phillip Carter, Hereinafter called Plaintiff petitioning for relief from the acts of Martin Dies Jr., Secretary of State of Texas and the State Chairman of the Democratic Party of Texas and petitions for relief as set out in Plaintiff's Prayer on the following grounds:

I.

Plaintiff is a resident of Dallas County, Texas. Defendant, Martin Dies Jr., is the duly appointed Secretary of State of Texas. Defendant, Elmer C. Baum is the Chairman of the Democratic Party of Texas an unincorporated political association.

II.

On February 2, 1970, Plaintiff attempted to file with the Chairman of the Democratic Party of Dallas County for the office of Commissioner of Public Lands. Said request was refused on the grounds that state statute required that the applications be made in Austin, in person to the Executive Committee of the Democratic Party of Texas, by 6:00 p.m., February 2, 1970. Application was then made by telegram to said Defendant Chairman setting out the statutory information required to file for said office and informing them that a notarized copy was on file at the Dallas office. By return telegram February 2, 1970, the Defendant Chairman stated that said application was denied.

III.

Said filing was refused pursuant to state statute requiring that said filing fee be in the amount of $1,000.00, V.A.T.S. Election Code, art. 13.15, and V.A.T.S. Election Code, Act 13.12.

IV.

Plaintiff has substantially complied the statutory requirement of filing except for payment of the filing fee and the effect of such requirement deprives the majority of the right to run for, and therefore to hold office. Specifically it denies Plaintiff the equal protection of the laws required by the 14th Amendment of the United States Constitution in that it effectively denies him the equal opportunity to run for, and therefore hold office. It also sets a property requirement for holding office.

WHEREFORE, Plaintiff prays that Article 13.15 be held unconstitutional and therefore the filing for the Democratic primary of Texas closed by statute February 2, 1970 for the office of State Commission of Public Lands be reopened without filing fee or, in the alternative an injunction be issued ordering the Defendant Chairman to certify Plaintiff's name to the Defendant Secretary of State of Texas to be placed on the Democratic Party's ballot for Primary election of 1970 and that the Defendant Secretary of State of Texas be enjoined to accept such certification and to place Plaintiff's name on said ballots.

(Signature)
H. AVERIL SWEITZER
Fifth Floor, Manor House
1222 Commerce
Dallas, Texas 75202
747-2845

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
CIVIL ACTION NO. 4-1367

(Title omitted in printing)

PLEA IN INTERVENTION

Comes now Reubin Jenkins, hereinafter styled intervenor, and would respectfully show unto the Court the following:

1. Intervenor is a resident citizen, taxpayer, qualified voter, and duly elected Democratic Precinct Chairman of Election Precinct Number 93, of Fort Worth, Tarrant County, Texas.

2. The jurisdiction of this court is invoked pursuant to 42 U.S.C. 1983 and U.S.C. 1343(3). This is a class action, within the scope of Rule 23 of the Federal Rules of Civil Procedure, on behalf of intervenor and all other persons similarly situated, to restrain the enforcement of an act or resolution of the Tarrant County Democratic Executive Committee which deprives intervenor and other members of the class or classes to which he belongs of rights, privileges and immunities secured by the Constitution of the United States of America.

3. This is an action for a declaratory judgment initiated pursuant to 28 U.S.C. 2201 and U.S.C. 2202. A three-judge district court is being requested, as provided in U.S.C. 1973, from which an appeal will lie directly to the United States Supreme Court.

4. The plaintiff in this lawsuit is Theodore H. Wischkaemper, a resident of Fort Worth, Tarrant County, Texas, who has timely filed his application to be a candidate for the office of County Judge of said

County in the Democratic Primary Election set by law for May 2, 1970.

5. The defendant in this lawsuit is the Hon. Robert L. Wright, Chairman of the Tarrant County Democratic Executive Committee, and his successors in office. The Chairman of the Tarrant County Democratic Executive Committee is the officer authorized by law to accept qualifying fees, or filing fees, from candidates for the various offices to appear on the ballot in the Democratic Primary Election to be held in Tarrant County, Texas, on May 2, 1970.

6. The plaintiff filed his Original Petition in this lawsuit, *pro se,* on December 15, 1969; and the Hon. Robert L. Wright, then Chairman of the Tarrant County Democratic Executive Committee, after being duly served with citation on December 17, 1969, filed his Original Answer on or about January 6, 1970.

7. On January 13, 1970, plaintiff filed his "First Amended Petition in this lawsuit, *pro se,* alleging that "the said Robert L. Wright resigned as Chairman of the Tarrant County Democratic Executive effective January 1, 1970. And that the Honorable Court make as binding on Dr. J. D. Tomme, who assumed that office on Jan. 1, 1970, plaintiff's original petition and citation servised (sic) on Robert L. Wright by the U. S. Marshal's office on December 17, 1969, as though servised (sic) on Dr. J. D. Tomme." Both Robert L. Wright and his successor in office, Dr. J. D. Tomme, have been furnished with copies of both the plaintiff's Original Petition and his "First Amended Petition," according to a certificate signed by the plaintiff at the bottom of the pleading filed on January 13, 1970.

8. Intervenor is informed and believes that the Tarrant County Democratic Executive Committee adopted

a schedule of qualifying fees for candidates who want their names to appear on the ballot in the Democratic Primary Election set for May 2, 1970; said fees, ranging in amount from $50.00 to $8,900.00, have been assessed at approximately eight per cent of the total amount of the salary of the office for the entire term. For two year offices, the assessment would thus be approximately sixteen per cent of one year's pay; and for four-year offices' such as County Judge, the assessment would be approximately thirty-two per cent of one year's pay. The fee actually assessed for the office of County Judge is $6,300.00, an amount which plaintiff was unable to pay.

9. The schedule of qualifying fees which defendant, Dr. J. D. Tomme, is attempting to enforce are exorbitant, excessive, and unreasonable, and bear no relationship to any legitimate legislative purpose, such fees being so high that they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay the fees demanded.

10. The intervenor is informed and believes that plaintiff and other persons, who, by reason of their financial condition or outright poverty, are unable to pay said exorbitant qualifying fees will not be permitted to participate in the drawing for places on the ballot, set by Art. 13.17a for March 16, 1970, by the defendant, Dr. J. D. Tomme.

11. The intervenor is also informed and believes that the said defendant, Dr. J. D. Tomme, will not certify the names of those candidates who are unable to pay said exorbitant qualifying fees to the primary committee, when it meets on March 23, 1970, to make up the ballot for the May 2, 1970 primary, pursuant to Art. 13.14; and that said committee will actually leave

the names of such persons, including the plaintiff, from the official ballot to be used in said primary election.

12. A property qualification for candidates for public office permits inclusion on the ballot of many persons having only a remote and indirect interest, while excluding others having a distinct and direct interest, and it therefore violates the equal protection clause of the Fourteenth Amendment. A non-property owner cannot be barred from voting or seeking office on that ground alone.

13. Under the Texas statute, voters wanting as a candidate a man, such as plaintiff, who is unwilling or unable to pay an exorbitant qualifying fee, must pay the fee themselves, so that the effect of the law is to place an unconstitutional burden on the voters. Intervenor hereby asserts that the imposition of a property qualification on candidates is therefore an indirect property qualification on voters and unconstitutional.

14. In States such as Texas, where the primary election is in a real sense the only true election, the vote at the final election is merely a formal flourish, except in rare cases. It is common knowledge that whoever receives the Democratic nomination to an office in Tarrant County, Texas, is elected to the office in the General Election. Sixty candidates for the May 2 Democratic primary have paid filing fees for 39 positions, while only 9 Republican candidates have paid filing fees for 8 positions in the Republican primary. There is no Republican seeking the office of County Judge in Tarrant County this year, so that the Democratic nomination for the office which plaintiff seeks is tantamount to election.

15. Intervenor believes that his vote has been impaired, lessened, diminished, diluted, and destroyed

by the fact that his choice on the primary ballot (and thereby the election itself) is limited to those who are willing and able to pay an exorbitant and prohibitive qualifying fee; and that he has been denied his constitutional right to participate in the elective processes by reason of the fact that defendant, Dr. J. D. Tomme, is attempting to enforce an unconstitutional property qualification on candidates for public office in the Democratic Primary Election, which is an integral part of the procedure for electing public officials in Texas.

16. Texas has delegated its function of conducting primaries to the political parties, and in this respect the party's action is the action of the State.

17. The pertinent provisions of the Texas Election code have been amended by the Texas Legislature since November 1, 1964, or have been reenacted since that date. The resolution of the Tarrant County Democratic Executive Committee, adopting the schedule of qualifying fees herein complained of, was adopted on February 9, 1970.

18. A qualifying fee for the office of County Judge is contrary to and in violation of the Constitution of the State of Texas, in that it requires from plaintiff, as a candidate for said office a property qualification (i.e., possession of $6,300.00 in cash) in addition to the qualification set forth in the State Constitution, Art. 5, Sec. 15, which provides merely that "he shall be learned in the law of the State."

19. In addition to plaintiff, there are at least three other candidates who are being denied a place on the Democratic Primary ballots because of their inability to pay qualifying fees: Van Phillip Carter, candidate for State Land Commissioner ($1,000.00 fee); and Mrs. Vernon R. "Dick" Winters and Pearce Scott,

the only two candidates who filed for Public Weigher ($50.00 fee). Candidates for Public Weigher are customarily not assessed a filing fee in Tarrant County, because the job carries no salary. But Mr. Scott is a Negro. Enough said. No filing fee, no public weigher.

20. Intervenor is informed and believes that the schedule of Tarrant County qualifying fees was not prepared in the statutory manner, even though statutes relating to the financing of primaries must be carefully construed and strictly followed. The expenses, instead of being carefully estimated and apportioned by the entire Tarrant County Democratic Executive Committee, "in such manner as in their judgment is just and equitable," as contemplated by Art. 13.07a and 13.08 of the Texas Election Code, were actually estimated and apportioned by a clandestine illegal committee of three intruders, who wrongfully attempted to usurp the discretionary judicial functions of the entire Tarrant County Democratic Executive Committee of more than one hundred and fifty members duly elected by the voters of Tarrant County in the various voting precincts. The attempt of the Tarrant County Democratic Executive Committee to ratify the ultra vires act of the committee of intruders was ineffective and void. It is now impossible for the Tarrant County Democratic Executive Committee to reconvene and estimate and apportion the expenses of the election on the second Monday in February, since that date is already passed; and that, therefore, no legal schedule of filing fees has ever been adopted for Tarrant County for the 1970 Democratic Primary Election; so that, no matter what the courts decide as to the legality or constitutionality of qualifying fees for the rest of the State, all filing fees, or qualifying fees for Tarrant County for the year are null and void under State law,

as well as under the State and Federal Constitutions, and should be so held by the courts.

21. Intervenor is informed and believes that the sums of money demanded and received by the present Chairman of the Tarrant County Democratic Executive Committee of candidates desiring a place on the ballot in the party primaries are grossly in excess of the amount sufficient to cover the reasonable and necessary expenses involved. It has been customary for said fees to overestimated to such an extent that rebates of up to forty per cent are not uncommon in Tarrant County after the legitimate expenses of the primaries have been paid. As a matter of fact, the County Democratic Chairman has been twice sued by candidates claiming that he has wrongfully and unlawfully expended and kept several thousand dollars and this after substantial rebates! Overassessment of filing fees is a wicked device, which, like the poor, we have with us always.

Wherefore, premises considered, intervenor prays that a three-judge Federal District Court be impanelled to hear plaintiff's cause of action, together with this Plea in Intervention; and, that pending such hearing and the appeal thereof to the United States Supreme Court, a temporary restraining order, an interlocutory injunction and a permanent injunction, or such of them as may be appropriate, issue enjoining the holding of the Democratic Primary Election now set for May 2, 1970, until such time as defendant J. D. Tomme and other Democratic Party officials afford a reasonable opportunity to apply for positions on the Democratic Primary ballots any and all persons who cannot afford to pay the qualifying fees which have been demanded as a precondition to candidacy for public office. Intervenor also prays that the drawing for

places on the ballot be restrained and enjoined as well; and that injunctive relief be immediately granted compelling the Democratic Party of Texas and of Tarrant County to refrain from imposing qualifying fees as a condition to filing for public office; and for such other relief in law and in equity to which he may show himself justly entitled.

THEODORE H. WISCHKAEMPER
on behalf of himself
and all others similarly situated,
plaintiff

vs. PLEA IN INTERVENTION

ROBERT L. WRIGHT
Chairman of the Tarrant County
Democratic Executive Committee
and his successors in office

(Verification omitted in printing)

Respectfully submitted,

(Signature)
A. L. CROUCH
Attorney for Intervenor

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EP-70-CA-7

(Title omitted in printing)

PLAINTIFF-INTERVENORS AMENDED COMPLAINT

Comes now the Plaintiffs, THEODORE H. WISCH-KAEMPER, VAN PHILLIP CARTER and REUBIN JENKINS, and file this their pleadings and Three-Judge application of intervenor and complaining of defendants, GEORGE A. McALMON, JR., and DR. J. D. TOMME, JR., as Chairmen of the County Democratic Executive Committee of El Paso and Tarrant Counties, Texas respectively; the Democratic Primary Committee of El Paso and Tarrant Counties, Texas, respectively; the Democratic Primary Committee for the State of Texas; Preston Smith as Governor of the State of Texas; Crawford Martin, as Attorney General of the State of Texas; MARTIN DIES, JR., as Secretary of State of Texas; ELMER C. BAUM, as Chairman of the State Democratic Party of Texas; the State of Texas, a body politic, the County Democratic Executive Committee of El Paso and Tarrant Counties, Texas respectively, and the Texas Democratic Executive Committee and for cause of action would respectfully show unto the three-Judge Court the following:

The defendants are sued in their representative capacities as elected officers of the State of Texas and of the Democratic Party in the State of Texas and the respective Counties within the State of Texas. The various official individuals sued herein are charged with

duties in connection with State and County primary and general elections and the laws.

1. Plaintiffs and class plaintiffs allege and reallege and hereby incorporate and adopt by reference all the law and allegations set forth in Plaintiff Pate's Second Amended Original three-Judge Application and Complaint, except those facts in regard to each plaintiff intervenor as set out below.

2. Jurisdiction of this action is conferred upon the Court under the provision of the Civil Rights Act, 42 USC 1983 and 1988 and also under 28 USC 1343(a), 2281 and 2283. This is an action for declaratory judgment initiated pursuant to 28 USC 2201 and 2202, for preliminary, interlocutory, permanent and mandatory injunctions and temporary restraining orders to prevent irreparable damage to plaintiffs, and for further and different relief as may be appropriate in equity and law.

3. This is a class action on behalf of the plaintiffs and all other people similarly situated in the State of Texas to restrain the enforcement of Texas statutes and declaring them unconstitutional and requesting temporary restraining orders and injunctive relief. Plaintiffs and class plaintiffs are all qualified voters, taxpayers, citizens of Texas, and the various Texas counties, and putative or prospective democratic candidates in present and future Democratic primary elections for certain state, district, county and precinct public offices within the State of Texas. Such persons are so numerous as to make it impractical to bring them all before the Court; the claims of the plaintiffs are typical of the claims of such persons, and the plaintiffs will adequately and fairly represent the interest of such persons, and there are common questions of law and fact common to all plaintiffs and such persons.

4. The plaintiff Wischkaemper is a resident and qualified voter of Tarrant County, Texas, who is qualified for the office of County Judge of Tarrant County, Texas, for which public office plaintiff Wischkaemper intends to run and is an announced candidate for, in the May 2, 1970 Democratic primary election and plaintiff intends to run and will run for the office of County Judge of Tarrant County, Texas in future precinct elections thereafter and to be a voter in such elections. The Tarrant County, Texas Democratic Executive Committee has filing fee or assessment of $6,300.00 for the office of County Judge of Tarrant County, Texas for the 1970 Democratic primary elections. Plaintiff Wischkaemper is unable to pay and will not pay the filing fee or assessment of $6,300.00 set for the public office of County Judge of Tarrant County, Texas, thus depriving him of his right to vote for himself and to seek nomination to public office in Democratic primaries. Plaintiff Wischkaemper hereby adopts by reference pleadings contained in Exhibit "A" to the motion to intervene.

5. The plaintiff Carter is a resident and qualified voter of Dallas County, Texas, who is qualified for the office of Commissioner of the General Land Office, for which public office plaintiff Carter intends to run and is an announced candidate for in the May 2, 1970 Democratic primary election, and plaintiff intends to run and will run for such public office in future primary elections thereafter and to be a voter in such elections. Article 13.15 Texas Election Code sets a filing fee of $1,000.00 for the office of Commissioner of the General Land Office in the primary election. Plaintiff Carter is unable to pay and will not pay the filing fee of $1,000.00 set for the above public office, thus depriving

him of his right to vote for himself and to seek nomination to public office in Democratic primaries.

6. Plaintiff Jenkins is an intervenor and is a qualified voter of Tarrant County, Texas, and hereby adopts by reference his pleadings contained in Exhibit "C" to the motion of intervention.

7. This action arises under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution and the Freedom of Assembly Clause of the First Amendment to the United States Constitution, which secures certain rights, privileges and immunities of all citizens, as the defendants have deprived the plaintiffs of the right to an equally effective voice in the election process by an invidious discrimination by imposing upon those seeking to have their names placed upon the ballot as candidates for certain state, district, county, and precinct public offices in the Texas County and statewide Democratic Primary Elections set for May 2, 1970 and for future elections, exorbitant, unreasonable, arbitrary, capricious, irrelevant, and outrageously high filing fees or assessments which bear no reasonable relation to any legitimate legislative purpose and such filing fees are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. The filing fees or assessments are so high they may be presumed to have been imposed with the intention of preventing the candidacy of persons unable to pay or who fail or refuse to pay the filing fees or assessments imposed by the various Democratic Executive Committees. These filing fees also prevent qualified voters from voting for those persons whose candidacy is prevented by such filing fees.

Furthermore, the introduction of wealth as payment of a fee as a prerequisite or measure of a citizen's or

voter's qualifications to have his name placed on the primary ballot or to vote, is to introduce a capricious or irrelevant factor, and the requirement of fee paying in this context as a condition to be a candidate or voter in the various Democratic primaries, causes an invidious discrimination that per se violates the Equal Protection Clause and furthermore, the Texas Statutes under attack permit and provide an invidious classification discrimination between various candidates for different offices by having different filing fees for the various candidates.

The various Democratic Executive Committees have deemed that the length of a prospective candidate's pocketbook alone will be made the yardstick as to whether his name appears or does not appear on the primary ballot. It is a fundamental rule of human nature and political behavior that high filing fees for public office tends to keeps the "ins" in and the "outs" out. Furthermore, defendants will effectively deprive the plaintiffs of their right to vote, for the right to run for public office is a correlative of the right to vote.

The defendants have denied the plaintiffs and class plaintiffs their fundamental political right of freedom of association (political association) for the purpose of voting and being nominated as candidates for public office in the democratic primaries in violation of the First Amendment, by reason of the Equal Protection and Due Process clauses of the Fourteenth Amendment, by an invidious discrimination through the establishment of filing fees as a prerequisite to running for nomination to public office.

8. Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, are void and unconstitutional as they violate the equal protection and due process clauses of the Fourteenth Amendment, and the Freedom of As-

sembly clauses of the First Amendment to the United States Constitution, in that they impose and permit filing fees or assessments for candidates for public offices in the democratic primary election to be held May 2, 1970 and in future primary elections, upon persons who by reason of their lack of funds or poverty, are unable to pay said filing fees or assessments, or fail or refuse to pay said filing fees or assessments. The Chairmen of the various Democratic Executive Committees will not accept candidate's applications for official, unless a deposit of $50.00 is made and the assessment made by the Democratic Executive Committees are paid timely or the fixed filing fee is paid. The ex-officio chairman of the democratic party committee and the democratic party committee will not place any person's names on the official democratic primary ballot who has not filed an application for a place on the ballot along with the prerequisite of paying the deposit of $50.00 and the assessment as made by the democratic executive committee. The filing fee or assessment by the various Democratic executive committees and by Article 13.15 Texas Election Code are exorbitant, arbitrary, capricious, irrelevant, unreasonable, outrageously high, and bear no reasonable relation to any legitimate legislative purpose and are not germane to one's ability to participate intelligently in the electoral process as a candidate for public office. In setting filing fees and assessments at such unreasonable and outrageously high level, and permitting some candidates to file in the democratic primary by merely paying a fixed fee, as for State legislators, the fee of $150.00, the statutes in question and the prospective resolutions and resolution of the various Democratic Executive Committees making assessments under Article 13.08, Texas Election Code, deprive the plaintiffs and all other persons similarly situated, of rights, privileges and immunities

secured by the equal protection and due process clauses of the 14th Amendment, and the freedom of assembly clause of the First Amendment to the United States Constitution, and established an invidious classification discrimination.

9. The plaintiffs and all other persons similarly situated are unable to and refuse to pay the filing fees and assessments imposed by the Texas statutes under attack and the assessments to be made and made by the various Democratic Executive Committees and the State of Texas under the Texas election code which establishes fixed fees for some candidates, and therefore, they are deprived of their right to seek nomination to public office, to seek public office, and to the right to vote in the 1970 and in all future primary elections.

WHEREFORE, plaintiffs pray for declaratory, injunctive relief, and for temporary restraining orders as follows:

A. That this complaint and application be given precedence, and be advanced on the docket and assigned for a hearing at the earliest practicable day.

B. That this Court order this matter litigated as a class action.

C. That this Court immediately restrain and enjoin the enforcement of the prospective and actual resolutions of the various Democratic Executive Committees imposing filing fees or assessments against the plaintiffs or similarly situated persons as a prerequisite to filing and application for a place on the ballot for public office in the various Democratic Primary Elections set for May 2, 1970 and all future primary elections.

D. That this Court immediately order the defendants to place plaintiffs' names and the names of other

similarly situated persons on the respective official ballots in the Democratic Primary election of May 2, 1970 and all future primary elections without the payment of the filing fees or assessments for the office to which the individual plaintiffs seek nomination to as reflected herein, and for other public offices, in order that persons who are unable to afford the payment of outrageously high and unconstitutional filing fees or assessments may place their names in nomination for public offices in the present and future democratic primaries in Texas, or who fail or refuse to pay any filing fees.

E. That this Court immediately restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committees imposing filing fees or assessments against pay person who seeks public office and who is unable to afford the payment of outrageously high and unconstitutional filing fees or assessments, or who fails or refuses to pay any filing fee.

F. That Articles 13.07a, 13.08, 13.08a, 13.15 and 13.16, Texas Election Code, be declared void and unconstitutional.

G. That this Court grant relief in that the defendants be ordered immediately to place plaintiffs' names upon the ballot as candidates for the public office they individually seek, so that voters will have the right to hear from the plaintiffs as candidates in the democratic primaries, and to vote for them in all future primary elections.

H. That this Court immediately issue a temporary restraining order directed to the Chairmen of the various Democratic Executive Committees requiring them to certify to and file with the proper Texas County Clerk, or other officer, the plaintiffs' names as candi-

dates for the office they seek individually, and to place plaintiffs' names on the official ballot for the Democratic primary set for May 2, 1970 without the payment of their assessments or fixed fees in order to prevent irreparable damage to plaintiffs and class plaintiffs and that such hearing and ruling be had immediately.

I. That the plaintiffs have the cost of their action against any defendants hereto and that plaintiffs have such other and further relief as to the Court shall seem just and proper.

Plaintiffs will amend their complaint so as to add any other party defendants or party plaintiffs as may be necessary and proper, and to allege other facts and seek other relief as the facts and the law may warrant.

(Signature)
A. L. CROUCH, Attorney for Plaintiff-Intervenors
109 N. Taylor Street, Fort Worth, Texas

CALAMIA & FASHING
Attorneys for the Plaintiffs and of counsel for the plaintiff-intervenors
608 Southwest Center
El Paso, Texas 79901

(Signature)
JOHN L. FASHING

OF COUNSEL:

A. L. CROUCH, Attorney for T. H. Wischkaemper Plaintiff and REUBIN JENKINS, Intervenor

H. AVERIL SWEITZER, Attorney for Van Phillip Carter, Plaintiff

SUPREME COURT OF THE UNITED STATES

No. _____, October Term, 1969

ETHEL MAE MATTHEWS, ET AL.,
Appellants,

vs.

J. J. LITTLE, CITY CLERK OF THE CITY OF ATLANTA

ORDER

UPON CONSIDERATION of the application of counsel for the appellants for an injunction prohibiting the holding of an election and to restrain the collection of qualifying fees, said application is denied, but for the reasons set forth in the accompanying opinion.

IT IS ORDERED that the appellee in the above-entitled cause be, and he hereby is, restrained and enjoined from collecting or requiring from these appellants the payment of the qualifying fees established by the Atlanta, Georgia, Ordinance of August 26, 1969, pending the timely filing and disposition of an appeal in this case. In the event a timely appeal is not perfected, or this Court determines that said fees are not invalid, nothing herein shall prevent appellee from requiring the payment of these fees by appellants, if they are candidates in the election now scheduled for October 7, 1969.

IT IS FURTHER ORDERED that because the time for filing notices of candidacy expires on September 10, 1969, the City of Atlanta shall extend said deadline until September 16, 1969.

Nothing herein shall be interpreted as requiring or

prohibiting any postponement of the aforesaid election by the City.

(Signature)
HUGO L. BLACK
Associate Justice of the Supreme Court of the United States

Dated this 9th
day of September, 1969.

A true copy, JOHN F. DAVIS,
Test:
Clerk of the Supreme Court of the United States

ANSWER TO REQUEST FOR CLARIFICATION OF ORDER

1. Justice Black's order extends to only those persons who are parties to the case.

2. The case was brought as a class action and was apparently treated as such by the Court below.

3. If there is a dispute as to whether a particular individual, that is a potential candidate, is a member of the class and covered by the order, it is up to the District Court to decide these questions in the first instance.

4. Any party aggrieved by a decision of the District Court can, of course, seek relief from Justice Black as Circuit Justice.

5. Justice Black had hoped that this need for clarification would not arise since, if the Atlanta officials feel strongly that the filing fees were constitutional and absolutely necessary to the holding of the election, they could always postpone the election until the full Court has had an opportunity to decide the issue.

SUPREME COURT OF THE UNITED STATES

October Term, 1969

Ethel Mae Matthews et al.

Appellants

vs.

J. J. Little, City Clerk of the
City of Atlanta

Application for Injunction

[September 9, 1969]

MR. JUSTICE BLACK, Circuit Justice.

Appellant Ethel Mae Matthews is a prospective candidate for alderman in an Atlanta, Georgia, municipal election now scheduled for October 7. Appellant Julia Shields is a duly qualified Atlanta voter. Both appellants claim that their constitutional and statutory rights are abridged by the exclusion of potential candidates for local offices who cannot afford the filing fees fixed by an Atlanta municipal ordinance of August 26, 1969. They challenge the ordinance on the grounds that fees sought to be exacted violate the Equal Protection Clause of the Fourteenth Amendment and § 5 of the Voting Rights Act of 1965, 42 U. S. C. § 1973e (1964 ed., Supp. I). The constitutional question appears to me to be a substantial one which calls for decision by the full Court. This question is all the more serious because a three-judge district court decided in this case that the collection of the filing fees fixed by the ordinance does unconstitutionally deny equal protection of the law. The city election is presently set for October 7, and although this Court meets October 6, we will not have time to consider and decide the merits of the constitutional claim before the election

is to be held. The result is that appellants cannot have their case decided unless some provision is made to take care of the problem. A court-ordered postponement of the election could have a serious disruptive effect. On the other hand the refusal or inability to pay fees deemed unconstitutional might keep serious candidates from running, thus depriving Atlanta voters of an opportunity to select candidates of their choice. Both of these undesirable consequences should be avoided if possible, and to some extent they can be. This can be done by temporarily relieving appellants from payment of the challenged fees until the entire Court has had an opportunity to pass on all the questions raised. Should the appellants' claims be accepted by the Court, they would then never be required to pay the challenged fees. Should their claims be rejected, they would be subject to the fees. Because the time for candidates to file notice of their candidacy is scheduled to expire on September 10, 1969, a necessary consequence to this order is that the city should extend the date for candidates to file notice of their candidacy at least until Tuesday, September 16, 1969. This disposition permits Atlanta to proceed with the election as now scheduled. In the alternative, Atlanta officials could decide of their own accord to postpone the municipal election until after this Court has had an opportunity to hear and decide the issues involved.

It is so ordered.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

MOTION FOR LEAVE TO INTERVENE

TO THE HONORABLE COURT:

Come now Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien and move for leave to intervene as party Plaintiffs and for leave to file intervenors' complaint attached hereto. This motion is filed pursuant to Rule 24 (a), (2), F.R.C.P., or in the alternative Rule 24 (b) (2). As grounds for this action applicants state:

1. Intervenors sue in their own behalf and as representatives of a class of persons similarly situated more fully set forth in the complaint. They are registered voters qualified to vote in the Democratic primary for the office of County Commissioner of Precinct 4, and for other offices.

2. That they are poor persons like candidate William Pate and are members of his class.

3. They desire the opportunity to cast their votes in the Democratic primary for Plaintiff William Pate, candidate for the office of County Commissioner of Precinct 4, and members of his class.

4. Unless relief is granted, intervenors will not be allowed to vote for William Pate because Defendant George McAlmon has and threatens to continue to impose as a condition to candidate Pate's appearing on the ballot payment of an unreasonable, arbitrary, and outrageously high filing fee and assessment which candidate William Pate and members of his class cannot afford to pay.

5. That the filing fees and assessments imposed upon candidate William Pate deny intervenors and their class freedom of assembly guaranteed by the First Amendment, equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution, and the right to vote for the candidate of their own choice because of an invidious discrimination against candidate William Pate, and members of his class, based solely on wealth. By reason of such discrimination intervenors are denied the right to vote for candidates who by reason of their similar economic background would best represent intervenors economic condition and interests.

6. That intervenors represent interests which have not been adequately represented by present Plaintiffs, and that adverse decision in the present case will significantly affect the rights and interests of intervenors and their class.

7. That intervenors' claim presents questions of laws and fact common to the main action.

8. That there is attached hereto a complaint setting forth the claims for which intervention is sought.

WHEREFORE, the applicants pray that this motion be granted, and that intervenors' complaint be filed.

(Signature)
FRED WELDON
FRED WELDON AND STUART R. ABLESON,
Attorneys for Intervenors
By Fred Weldon
119 N. Stanton, Rm. 215
El Paso, Texas 79901
544-3022

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
OF THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

PLAINTIFF INTERVENORS' COMPLAINT

TO THE HONORABLE COURT:

Come now Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien and for cause of action would respectfully show the Court the following:

I.

Jurisdiction is conferred upon the Court under 42 U.S.C. §1983 and 1988 and also pursuant to 28 U.S.C. §1343 (3) & (4), 2281 and 2284. Declaratory judgment is sought under 28 U.S.C. §2201 and 2202. The purpose of this action is obtain injunctive and declaratory relief and to redress deprivation of the federal constitutional right to vote.

II.

Plaintiff intervenors, Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien are registered voters, qualified to vote in the El Paso County, Texas Democratic Primary elections set for May 2, 1970. They desire to cast their votes in said primary, and future primaries, for William Pate for the office of County Commissioner of Precinct 4, and in future primaries for candidates of the class represented by Pate.

III.

Plaintiff intervenors are poor persons unable or unwilling to pay the filing fees assessed against Wil-

liam Pate by Defendants, which William Pate has himself been unwilling or unable to pay, and for this reason Plaintiff intervenors will not be able to vote for the candidate of their choice.

IV.

Deprivation of the right to vote by discriminating against would-be candidates on the sole basis of wealth, denies Plaintiff intervenors due process and the equal protection of the laws as guaranteed by the 14th Amendment to the United States Constitution.

V.

Prevention of William Pate's candidacy because of his lack of wealth prevents Plaintiff intervenors from voting for the candidate who by reason of his economic background can best represent Plaintiff intervenors' political views and economic interest. This denies Plaintiff intervenors' freedom of association as guaranteed by the First Amendment to the United States Constitution.

VI.

The high filing fees assessed by Defendants against William Pate are exorbitant, unreasonable and unrelated to any legitimate legislative purpose.

VII.

This is a class action brought under Rule 23, F.R. C.P. by Plaintiff intervenors on behalf of themselves and all other people similarly situated and as members of U.N.I.O.N., Incorporated. U.N.I.O.N. is The Neighborhood Association of Canutillo, Texas, and a Texas non-profit corporation membership of which are poor people of Canutillo, Texas, which lies in County Commissioner Precinct 4. Plaintiff intervenors and class

Plaintiff intervenors are all poor qualified voters, tax payers and citizens of El Paso County, Texas, and putative or prospective Democratic voters in present and future Democratic primary elections for district county, and precinct public offices in El Paso County, Texas. Such persons are so numerous as to make it impracticable to bring them all before the Court; the claim of the Plaintiff intervenors is typical of the claims of such persons, and the Plaintiff intervenors will adequately and fairly represent the interests of sueh persons, and there are common questions of law or fact to all Plaintiffs and such persons.

VIII.

This complaint is based upon state action and Defendants agency for the State of Texas in administering Art. 13.08, Texas Election Code.

IX.

Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16, Texas Election Code, are void and unconstitutional because they violate the equal protection and due process clauses of the 14th Amendment and the freedom of assembly clauses of the First Amendment to the U.S. Constitution, by imposing and permitting exorbitant and unreasonable filing fees or assessments upon candidates for public offices in the Democratic Primary Election to be held May 2, 1970, and in future primary elections, upon persons who by reason of their lack of funds or poverty, are unable to pay said filing fees or assessments or fail or refuse to pay such filing fees or assessments.

X.

Defendant George McAlmon is a resident and citizen of El Paso County, Texas, and is duly elected chairman

of the County Democratic Executive Committee of El Paso County, Texas. Defendant McAlmon is the Chairman of the County Democratic Executive Committee and the Democratic Party Officer with whom applicants for a place on the Democratic Primary ballot for the present primary Democratic election set for May 2, 1970 and future Democratic Primary Elections shall be filed in the case of district offices included wholly or partially within El Paso County, Texas and County and Precinct offices within El Paso County, Texas. Defendant McAlmon is sued individually and in his representative capacity as chairman of the County Democratic Executive Committee, El Paso County, Texas, as the ex officio chairman of the Democratic Primary Committee.

XI.

The Defendants, Preston Smith, Crawford Martin, and Martin Dies, Jr., are sued in their representative capacities as elected officers of the State of Texas. The various official individuals sued herein are charged with duties in connection with state and county primary and general elections. The Governor of the State of Texas, PRESTON SMITH, and the Attorney General of the State of Texas, CRAWFORD MARTIN, are also sued so that they will receive at least five days notice of hearings pursuant to 28 U. S. C. 2284 (2).

WHEREFORE, Plaintiffs pray for declaratory, injunctive relief, and for temporary restraining order as follows:

A. That this Court (single judge) immediately notify the Chief Judge of the Fifth Circuit that this application for injunctive and other relief has been presented to this Court in accordance with the procedure for a three Judge court under 28 U.S.C. 2281 and 2284,

so that said Chief Judge of the Fifth Circuit can designate two other judges to serve as members of this Court to hear and determine this action or proceeding.

B. That this complaint and application be given precedence and be advanced on the docket and assigned for a hearing at the earliest practicable day.

C. That this Court order this matter litigated as a class action.

D. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against Plaintiff William Pate or similarly situated persons as a prerequisite to filing and application for a place on the ballot for public office in the Democratic Primary Election set for May 2, 1970, and all future primary elections.

E. That this Court order the Defendants to place Plaintiff William Pate's name and the names of other similarly situated persons on the official ballot in the Democratic Primary Election of May 2, 1970 and all future primary elections without the payment of the filing fees or assessments for the office of County Commissioner of Precinct 4, El Paso County, Texas, and for other public offices; in order that persons who are unable to afford the payment of outrageously high and unconstitutional filing fees or assessments may place their name in nomination for public office in the present and future democratic primaries in El Paso County, Texas or who fail or refuse to pay any filing fees, and in order that Plaintiff intervenors and members of their class may exercise their right to vote for Plaintiff William Pate and members of his class in the present and in future democratic primaries.

F. That this Court restrain and enjoin the enforcement of the prospective and actual resolutions of the Democratic Executive Committee imposing filing fees or assessments against any person who seeks public office who is unable to afford the payment of outrageously high and unconstitutional filing fees or assessments, or who fails or refuses to pay any filing fee.

G. That Articles 13.07a, 13.08, 13.08a, 13.15, and 13.16, Texas Election Code, be declared void and unconstitutional.

H. That this Court grant relief in that the Defendants be ordered to place Plaintiff William Pate's name upon the ballot as a candidate for County Commissioner Precinct 4 of El Paso County, Texas so that voters will have the right to hear from the Plaintiff as a candidate in the democratic primary, and to vote for him in all future primary elections.

I. That this Court issue a temporary restraining order directed to the Chairman of the El Paso County Democratic Executive Committee requiring him to certify to and file with the El Paso, Texas County Clerk, Plaintiff William Pate's name as a candidate for County Commissioner Precinct 4, El Paso County, Texas, and to place his name on the official ballot for the Democratic general primary set for May 2, 1970, without the payment of his assessment of $1,424.60 in order to prevent irreparable damage to plaintiff intervenors and class plaintiff intervenors and that such hearing and ruling be expedited.

J. That the plaintiff intervenors have the cost of their action against any defendant hereto and such other and further relief as to the Court shall seem just and proper.

(Signature)
FRED WELDON
FRED WELDON AND STUART R. ABELSON,
Attorneys for Intervenors,
By Fred Weldon
119 N. Stanton, Rm. 215
El Paso, Texas 79901
544-3022

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION

No. EP-70-CA-7

(Title omitted in printing)

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

TO THE HONORABLE COURT:

Come now the plaintiff intervenors in the above styled and numbered cause, and in support of their motion for leave to intervene would show the Court the following argument and authorities:

I.

Applicants are proper Plaintiffs in this suit because they seek to vindicate the power and authority of their own ballots. The right to vote is a fundamental political right preservative of all rights and can become "illusory if the right to vote is undermined." *Wesberry v. Sanders,* 11 L.Ed. 2d 481. Here the applicant plaintiff intervenors desire to assert their right to make common cause with candidate William Pate, a man without means like themselves, and to vote effectively by casting their ballots for the candidate of their choice who by reason of similar economic background expresses and represents applicants' political beliefs and views. These two overlapping rights, the right to associate for the advancement of political beliefs and the right to cast votes effectively have been recognized by the Supreme Court. *Williams v. Rhodes,* 1968, 21 L.Ed. 2d 24, 31. Moreover, the unreasonable exclusion of a candidate for public office, where other candidates are given places on the ballot, denies the voters who might wish to vote for the excluded candidate the equal pro-

tection of the laws. *Williams v. Rhodes,* 1968, 21 L.Ed. 2d 24, 29.

II.

The integrity of the electoral process has been traditionally safeguarded by suits of voters, not of candidates. Voters have sued to protect the right to vote from racial discrimination; *Smith v. Allwright,* 1944, 321 U.S. 649; *Terry v. Adams,* 1953, 345 U.S. 461; and economic discrimination; *Harper v. Virginia State Board of Education,* 1966, 383 U.S. 663; *Cipriano v. Houma,* 1969, 28 L.Ed. 2d 647. The recent case of *Williams v. Rhodes,* supra, involving the presidential candidacy of George Wallace, was brought by voters and decided on the ground of the right to vote and the right of voters to assemble, through the medium of a political party, with their candidate. *Mathews v. Little,* a case involving filing fees for aldermanic elections in Atlanta, Georgia, included Julia Shields, a duly qualified voter, as a party plaintiff. Justice Black found the high filing fees there deprived Atlanta voters of an opportunity to select candidates of their choice, 24 L. Ed. 2d 45 (1969), opinion in chambers.

III.

Applicants' motion for leave to intervene meets the requirements of Rule 24(a) or, in the alternative of Rule 24(b). Applicants' interest is the fundamental political right to vote; this right cannot be protected without access of candidates to the ballot, and existing plaintiffs represent principally the rights of candidates, not the rights of voters. In addition, applicants' claim presents common questions of law or fact with that of Plaintiff William Pate and his class. The Federal Rules are to be construed liberally to secure the just, speedy and inexpensive determination of every

action, F.R.C.P. 1. Admitting voters as party plaintiffs to a suit brought by a candidate avoids the necessity of an additional suit by the voters themselves. Considerations of judicial administration create a public interest "especially in these explosive days of every increasing dockets, of having a disposition at a single time of as much of the controversy to as many of the parties as is fairly possible consistent with due process. *Atlantis Development Corporation v. United States,* 1967, 379 F. 2d 818 (Brown, Circuit Judge, 5th Circuit).

Respectfully submitted,
(Signature)
FRED WELDON AND STUART R. ABELSON
Attorneys for Intervenors
By Fred Weldon
119 N. Stanton St., Rm. 215
El Paso, Texas 79901
544-3022

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge

CA 3-3733-C
3 Judge

EP-70-CA-7
3 Judge

(Title omitted in printing)

STIPULATION OF FACTS

The following facts are hereby stipulated between the parties hereto:

Plaintiff intervenors CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES, and MANUEL SAPIEN, as alleged in their proposed complaint in the above cause, are;

1. qualified and registered Texas voters;

2. eligible to vote in the El Paso Democratic Primary to be held May 2, 1970;

3. Democrats;

4. desirous of the opportunity to vote for candidate WILLIAM PATE for Democratic nomination for the office of El Paso County Commissioner for Precinct Four;

5. unable to vote for said candidate WILLIAM PATE because Defendant has refused to place his name on the ballot owing to his non-payment of the assessed filing fee; and,

6. that the said Guzman, Lozano, Sifuentes, and Sa-

pien are too poor to pay the filing fee on behalf of candidate PATE.

DATED: 4/1/70

(Signature)
STUART R. ABELSON
Attorney for Intervenors

(Signature)
MARK F. HOWELL
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

AFFIDAVIT

Before me, the undersigned authority on this day personally appeared LUZ A. LUZANO and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am forty-four (44) years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen, and am now and for over four years have been a resident of Canutillo, Texas. My address is P. O. Box 353, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat and am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commission, Precinct Four, and for other offices.

(4) I am separated, have six children living at home, and my income is approximately $201 per month,

received from State Welfare, through the AFDC program.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fee assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE but who cannot or will not, individually or collectively, pay the filing fees assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
LUZ A. LOZANO

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

AFFIDAVIT

Before me, the undersigned authority on this day personally appeared CARLOS GUZMAN, and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am forty-four (44) years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen. My address is P. O. Box 113, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat and am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commissioner, Precinct Four, and for other offices.

(4) I am married with four children at home, and my income is approximately $650 per month take home

as an employee of Project BRAVO, am a past president and present advisor to U.N.I.O.N., Inc.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE, for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fees assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE, but who cannot or will not, individually or collectively, pay the filing fees assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
CARLOS GUZMAN

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

AFFIDAVIT

Before me, the undersigned authority on this day personally appeared ANDREA L. SIFUENTES, and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am forty-eight (48) years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen, and am now and for over four years have been a resident of Canutillo, Texas. My address is General Delivery, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat, and am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commissioner, Precinct Four, and for other offices.

(4) I am a widow, have six children, and receive so-

cial security and state welfare through the AFDC program.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fees assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE, but who cannot or will not, individually or collectively, pay the filing fee assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
ANDREA L. SIFUENTES

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
EP-70-CA-7
3 Judge

(Title omitted in printing)

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared MANUEL SAPIEN, and after being duly sworn deposes and says: I desire to bring an action against the above named Defendants and this affidavit is made in connection with my application for leave to intervene and prosecute such action against said Defendants and in connection therewith I state on oath that the following facts are true:

(1) I am over twenty-one years of age, am of sound mind, have never been convicted of a felony, and have personal knowledge of every statement made herein.

(2) I am a U.S. citizen. My address is General Delivery, Canutillo, Texas.

(3) I am a fully qualified and registered voter, a Democrat, and I am eligible and plan to vote in the El Paso County Democratic Primary to be held May 2, 1970, and in future primaries, for the office of El Paso County Commissioner, Precinct Four, and for other offices.

(4) I am married, have nine children, earn approximately $100 per week as a plumber's helper. My wife does not work.

(5) I am a member of U.N.I.O.N., the Neighborhood Improvement Association of Canutillo, Texas, and a Texas non-profit corporation.

(6) I desire to cast my vote in the forthcoming El Paso County Democratic primary and in future primaries for candidate WILLIAM PATE for the office of County Commissioner for Precinct Four, but cannot or will not pay the filing fees assessed against him and therefore will be unable to cast my ballot for the candidate of my choice.

(7) I am personally acquainted with and will adequately represent other similarly situated and qualified voters who reside in Canutillo, Texas, and who are eligible and whom I believe desire to vote for candidate WILLIAM PATE, but who cannot or will not, individually or collectively, pay the filing fees assessed against him.

I believe that I am entitled to the redress sought in the proposed action and the relief prayed for therein and because the Defendant will not grant my claim, and because of my poverty, I request that I be permitted to intervene and prosecute this action.

(Signature)
MANUEL SAPIEN

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge

VAN PHILLIP CARTER

vs.

MARTIN DIES, JR, and
DR. ELMER C. BAUM

CA 3-3733-C
3 Judge

THEODORE H. WISCHKAEMPER ON BEHALF
OF HIMSELF AND ALL OTHERS SIMILARLY
SITUATED

vs.

ROBERT L. WRIGHT, CHAIRMAN
OF THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.

REUBIN JENKINS, INTERVENOR

CA 3-3739
3 Judge

WILLIAM PATE
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED

vs.

GEORGE A. McALMAN, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS,
AND INDIVIDUALLY, AND THE COUNTY
DEMOCRATIC EXECUTIVE COMMITTEE OF
EL PASO COUNTY, TEXAS, AND THE
PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES and MANUEL SAPIEN, on behalf of themselves and all others similarly situated, and as members of U.N.I.O.N., Incorporated,
INTERVENORS

ORDER

On this the 3rd day of April, 1970, came on to be considered motions for preliminary injunction of plaintiffs in the above styled and numbered causes. The Court, having heard the arguments and read the briefs and pleadings, holds that relief should be granted to Theodore H. Wischkaemper and William Pate, individually and apart from any class they represent. It is to be understood that this order does not apply to any other parties in this suit or to any person who may file or who has filed application for candidacy but is not a party to this suit. Relief is denied as to Plaintiff Van Phillip Carter because he has not complied with state statutes unrelated to filing fees and assessments.

Inasmuch as the constitutional question here presented is substantial, the Court finds that it is guided by the in chambers opinion of Mr. Justice Black in *Matthews v. Little,* 1970, — U.S. —, 90 S.Ct. 17, 24 L.Ed. 2d 45, in granting temporary relief as described above. Accordingly, it is ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiffs Pate and Wischkaemper are relieved from payment of the challenged filing fees until the Court has had an opportunity to pass on all the questions raised.

2. Should the Plaintiffs' claims be accepted by the Court, they would then never be required to pay the challenged fees.

3. Should the Plaintiffs' claims be rejected, they would then be required to pay the challenged fees.

4. This procedure permits the Democratic Parties in El Paso and Tarrant Counties to proceed with their primaries as scheduled.

(Signature)
HOMER THORNBERRY
United States Circuit Judge

(Signature)
SARAH T. HUGHES
United States District Judge

TAYLOR, District Judge (Dissenting)

Respectfully I dissent. I am fully mindful of the Order entered by Mr. Justice Black in the *Matthews v. Little* case referred to in the Order herein, but I am of the opinion that in that particular case Justice Black was concerned with a city election, expenses and costs of which were paid from public funds by the City of Atlanta. This case involves a party primary, the costs and expenses of which have been borne for years in Texas by the candidates and to now permit the Plaintiffs Wischkaemper and Pate to have their names placed on the ballot of that primary election without costs will create problems and difficulties from those who have paid their filing fees. Public funds have not been appropriated for the holding of the party primaries in Texas and, in my judgment, the Legislature of the State of Texas should have the opportunity and the time in which to review the contentions raised here and adopt appropriate legislation in the light of recent court decisions on matters of this kind. Plaintiffs Pate and Wischkaemper have the right under the Texas statutes to have their names put upon the ballot in the general election, but as succinctly pointed out by the

attorney for the Defendants, they do not want simply a place on the ballot but want the right to run on the ballot for the Democratic primary.

The questions involved here are important and far reaching and those who wish their names placed on the ballot of the party primaries can wait until this Court has had an opportunity, in due deliberation, to pass upon the constitutional questions involved.

(Signature)
W. H. TAYLOR, SR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
DALLAS DIVISION

CA 3-3635-C
3 Judge
CA 3-3733-C
3 Judge
CA 3-3739
3 Judge

(Title omitted in printing)

STIPULATION OF FACT

The Plaintiffs and Defendants in the above styled and numbered causes, do hereby stipulate as follows:

1. That Plaintiff William Pate is a qualified voter, taxpayer, resident citizen of El Paso County, Texas.

2. That Plaintiff William Pate is a resident of County Commissioner Precinct Four of El Paso County, Texas.

3. That Plaintiff William Pate meets all qualifications to be a candidate in Democratic Primary Elections for the office of County Commissioner of Precinct Four for El Paso County, Texas.

4. That Defendant George A. McAlmon, Jr., is a resident and citizen of El Paso County, Texas and is the duly elected chairman of the County Democratic Executive Committee of El Paso County, Texas.

5. That Defendant McAlmon as Chairman of the County Democratic Executive Committee is the Democratic Party Officer with whom applications for places on Democratic Primary ballots for Democratice Primary Elections shall be filed in the case of district officers included wholly or partially within El Paso

County, Texas, and county and precinct offices within El Paso County, Texas.

6. That in accordance with Article 13.08, Texas Election Code, the Defendant Democratic County Executive Committee apportions the cost (by assessment) of Democratic primary elections among the various candidates for nomination for district, county, and precinct offices, except candidates for the offices of Justice of the Court of Civil Appeals, office of State Board of Education, the office of State Senator, State Representative, and other State Officials (such as Governor) who pay fixed filing fees established by Article 13.15, Texas Election Code, to the Texas State Democratic Executive Committee.

7. That the defendant El Paso Democratic Executive Committee assessed candidates for the Democratic Primary of May 2, 1970 at seventeen (17) percent of assessed salary for the office for which they sought election, except where a fixed fee was set by state statute. A list of assessments made for each office nominated at the May 2, 1970 Democratic Party primary election in El Paso County, Texas is attached hereto as Exhibit "A."

8. That plaintiff William Pate was assessed $1,424.60 as a filing fee to be a candidate for the office of County Commissioner of Precinct Four in El Paso County, Texas by the El Paso County, Texas Democratic Executive Committee.

9. That Articles 13.07a, 13.08, 13.08a, 13.15, ad 13.16, Texas Election Code, imposes filing fees or assessments for candidates for public offices in the Democratic Party primary elections.

10. That the Chairman of the El Paso Democratic Executive Committee will not accept candidates' ap-

plications for a place on the ballot or file their names with the County Clerk of El Paso County, Texas in any future election unless a deposit of $50.00 is made, and the assessments made by the Democratic Executive Committee are timely paid, as required by the Texas Election Code.

11. That the Democratic County Chairman, as ex officio Chairman of the Democratic Primary Committee, and the Democratic Primary Committee, will not place any person's name on the official Democratic primary ballot in any future election who has not filed an application for a place on the ballot accompanied by the required deposit of $50.00 and who does not pay the required assessment as made by the El Paso County Texas Democratic Executive Committee as required by law.

12. That Plaintiff William Pate timely filed his application accompanied by the required $50.00 deposit with defendant McAlmon as the Chairman of the El Paso Democratic Executive Committee, for a place on the May 2, 1970 Democratic Party primary ballot as a candidate for County Commissioner Precinct Four of El Paso County, Texas.

13. That Plaintiff William Pate alleges that he was unable to and refused to pay the assessment of $1,424.60 imposed upon him as a condition precedent to having his name placed on the May 2, 1970 Democratic Party primary ballot as a candidate for the office of County Commissioner Precinct Four of El Paso County, Texas.

14. That the defendants McAlmon, as Chairman of the El Paso County Democratic Executive Committee, the El Paso County Democratic Executive Committee, and the El Paso Democratic Primary Committee re-

fused to place Plaintiff Pate's name on the ballot for the May 2, 1970 Democratic primary election unless he paid the $1,424.60 assessment timely as required by law, Plaintiff Pate contends that he was financially unable to pay this assessment.

15. That the cost of the Democratic Primary elections in all counties in Texas, including El Paso County, must be paid out of the assessments made against the candidates who seek nomination to precinct, county or district public office in said elections.

16. That state wide candidates such as governor pay a fixed fee to the Texas Democratic Executive Committee for the use of said committee as provided by law.

17. Plaintiff Pate was relieved from payment of the challenged filing fee by this Court and his name was placed on the ballot for County Commissioner Precinct Four, El Paso County, Texas, in the May 2, 1970 Democratic Primary election.

18. That William Pate was endorsed in said election by one of the two major newspapers in El Paso, Texas.

19. That William Pate lost the May 2, 1970 Democratic Primary election for the office he sought.

20. That William Pate received a total of 3,060 votes in said election out of a total of 10,685 votes cast; the incumbent received 6,013 and the third candidate received 1,612 votes.

21. That Plaintiff Pate would testify if called to testify, that he has announced that he will run for nomination for the office of County Commissioner for Precinct Four in El Paso County, Texas in the May, 1974 Democratic Primary election and in future elections thereafter, and that he will be a prospective Dem-

ocratic candidate in said elections, and will be unable to or will refuse to pay the filing fees and assessments imposed by Texas statutes and the assessments to be made by the El Paso Democratic Executive Committee.

22. Pursuant to the Texas Election Code, the Defendants, El Paso County Chairman of the County Democratic Executive Committee, the El Paso County Democratic Executive Committee and the El Paso Democratic Primary Committee, are not permitted by law to place the name of any person who may file or who has filed an application for candidacy for public office in future Democratic Primary elections in El Paso County, Texas upon the ballot for the public office they seek unless they timely pay the filing fees and assessments required by the Texas Statutes under attack in this cause, notwithstanding that said candidates are unable to pay or refuse to pay said filing fees and assessments and are otherwise qualified and have complied with all State Statutes unrelated to filing fees and assessments.

23. Plaintiff-Intervenor Van Phillip Carter, if called to testify, would testify:

(a) That he is a qualified voter, taxpayer, and resident citizen of Dallas County, Texas;

(b) That he now meets all the requirements under the Texas Election Statutes unrelated to filing for office and payment of filing fees and assessments to file as a candidate in Democratic Party primary elections for the state-wide office of Commissioner of the General Land Office and intends to be so qualified for future elections;

(c) That he intends to run and will run for said state-wide public office in future Democratic Party primary elections;

(d) That he is unable to pay and refuses to pay the filing fee of $1,000.00 required by Article 13.15, Texas Election Code for said public state-wide office, as a condition precedent to having his name put on the official Democratic Party primary ballot as an active candidate for said state-wide public office.

(e) That he is unable to comply with said Article 13.15, Texas Election Code, requirements that the said $1,000.00 filing fee must be paid to the Chairman of the State Democratic Executive Committee by the candidate at the time he files his application with same Chairman, or else the Chairman will not certify the candidates name to the Texas Secretary of State as a bona fide candidate to be transmitted by the Texas Secretary of State to the County Clerks of all Texas counties to be put on the official Democratic Party primary election ballots.

24. Plaintiff-Intervenors Carlos Guzman, Luz A. Lozano, Andrea L. Sifuentes, and Manuel Sapien, if called to testify, would testify that they are:

(a) Qualified and registered voters in El Paso County, Texas;

(b) Democrats;

(c) Eligible to vote in the May 2, 1970 Democratic Party primary election and in future Democratic Party primary elections to be held in El Paso County, Texas;

(d) Desirous of the opportunity to vote for candidate William Pate for Democratic nomination for the office of County Commissioner Precinct Four of El Paso County, Texas in future Democratic Party primary elections;

(e) Voters who cast their ballots for candidate William Pate in the May 2, 1970 Democratic Party primary election;

(f) Unable to vote for candidate William Pate in future Democratic Party primary elections because Defendants will refuse to place his name on the ballot owing to his non-payment of filing fees and assessments in future Democratic primary elections;

(g) Unable, due to their poverty, to pay the filing fees and assessments on behalf of candidate William Pate.

25. It is stipulated and agreed by all parties to this action through their attorneys of record that Van P. Carter, one of the Plaintiffs in the above cause, attempted to file for a place on the Democratic Primary ballot by sending a telegram to the Chairman of the State Democratic Executive Committee in Austin, Texas. This telegram was received by the State Democratic Executive Committee on February 2, 1970, having been sent from Dallas, Texas at 3:33 P.M., Central Standard Time. February 2 was the last day under the Texas Election Code for filing for office.

On the same day and at 5:08 P.M., Central Standard Time, the Chairman of the State Democratic Executive Committee replied to the telegram which he had received from Van P. Carter by telegram.

In further clarification, if such be required, there is filed in the records of this cause, an affidavit offered in evidence at the hearing on the preliminary relief request on Friday, April 3, 1970, which affidavit is incorporated by reference in this stipulation for all purposes and to which affidavit are attached copies of the above telegram.

It is further stipulated that Plaintiff Van P. Carter at no time submitted to the State Democratic Executife Committee a request in writing furnishing the information required by statute and executed under oath with the State Democratic Executive Committee nor was any filing fee actually tendered by cash or check or otherwise as required by statute.

26. It is stipulated and agreed by all parties to this action that the office of the Attorney General of Texas sent questionnaires to the various counties in the state, requesting information on assessment of candidates for the Democratic Primary of May 2, 1970. Answers from fifty-eight (58) counties are attached to this stipulation and made a part thereof, as "Exhibit B."

27. That this is an action for a declaratory judgment, as well as for preliminary, interlocutory and permanent injunctions.

28. That Theodore H. Wischkaemper is a resident citizen, taxpayer, and qualified voter of Fort Worth, Tarrant County, Texas, who meets all of the qualifications for County Judge set forth in the Constitution of the State of Texas, Art. 5, Sec. 15.

29. That Defendant, Dr. J. D. Tomme, Jr., is the duly elected Chairman of the Democratic Party of Tarrant County, Texas, and is the officer authorized by law to accept qualifying fees from candidates for local office in Tarrant County, Texas.

30. That intervenor, Reubin Jenkins, is a resident citizen, taxpayer, qualified voter, and duly elected Precinct Chairman of Election Precinct No. 93, of Fort Worth, Tarrant County, Texas.

31. That Plaintiff, Theodore H. Wischkaemper, if called to testify, would testify that he is financially

unable to pay the $6,300.00 fee assessed for the office of County Judge of Tarrant County, Texas, for the 1970 Democratic Primaries;

32. That Plaintiff, Theodore H. Wischkaemper, was a bona fide candidate for the office of County Judge in Tarrant County, Texas, in the 1970 Democratic Primary Election, and had his name printed on the official ballot without the payment of any qualifying fee by order of the 3-judge Federal District Court.

33. That Plaintiff, Theodore H. Wischkaemper, if called to testify, would testify that he will run for the office of County Judge of Tarrant County, Texas, in future elections, and will be a voter in such elections.

34. The Defendant, Dr. J. D. Tomme, Jr., Chairman of the Democratic Party of Tarrant County, Texas, will not accept candidates' applications for a place on the primary ballot or file their names with the County Clerk, or other appropriate official, unless a statutory deposit of $50.00 is paid and the assessment made by the Tarrant County Democratic Executive Committee is timely paid, or the fixed filing fee is timely paid.

35. The ex-officio chairman of the Democratic Party of Tarrant County, Texas, and the Democratic Party Committee will not place any person's name on the official democratic ballot who has not paid the statutory $50.00 deposit at the time of filing his application for a place on the ballot and who has not timely paid his fixed fee set by statute, or his assessed fee determined by the local Democratic Executive Committee.

36. The Plaintiff, Theodore H. Wischkaemper, if called to testify, would testify that he is not only financially unable to pay the filing fees and assessments imposed by the Texas statutes under attack and the assessments made by the Democratic Executive Com-

mittee and the State of Texas under the Texas Election Code, but refuses to pay the same, not only for the 1970 elections, but for future elections as well.

37. That the Tarrant County Democratic Executive Committee have enacted a resolution which imposes various qualifying fees, ranging from $50.00 up to and including $8,900.00 for the 1970 Democratic Primary Elections; that the Schedule of Fees attached hereto and marked "Exhibit C" is a correct copy of said qualifying fees; and that said figures have been assessed mainly on the basis of 8% of the salary for the full term of office, which would amount to 16% of one year's salary for 2-year offices and 32% of one year's salary for 4-year offices.

38. That "Exhibit D," which accompanies this instrument, is an accurate reproduction of parts of the statutory audits of the Tarrant County Democratic Party financial records for the Democratic Primary Elections held for the following years. 1970, 1968, 1966, 1964, 1962, 1960, 1958, 1954, 1952 and 1948, as the same appear on file in the County Clerk's Office of Tarrant County, Texas. That the years 1950 and 1956 are not on file in the County Clerk's Office of Tarrant County, Texas. These records reflect the filing fees and assessments in the Primary Elections for the year of audit. The parties hereby stipulate to the accuracy and admissibility of such statutory audits.

39. That "Exhibit E," which accompanies this instrument, is an accurate reproduction of parts of the statutory audits of the El Paso County Democratic Party financial records for the Democratic Primary Elections held for the following years: 1968, 1966, 1964, 1960 and 1958, as the same appear on file in the County Clerk's Office of El Paso County, Texas. These records

reflect the filing fees and assessments in the Primary Elections for the year of the audit. The parties hereby stipulate to the accuracy and admissibility of such statutory audits.

40. Plaintiff-Intervenor, Reubin Jenkins, if called to testify, would testify that he:

(a) Is desirous of the opportunity to vote for candidate Theodore H. Wischkaemper for Democratic nomination for the office of County Judge of Tarrant County, Texas in future Democratic Party primary elections;

(b) Did cast his ballot for candidate Theodore H. Wischkaemper in the May 2, 1970 Democratic Primary election;

(c) Is unable to vote for candidate Theodore H. Wischkaemper in future Democratic Party primary elections because Defendants will refuse to place his name on the ballot owing to his non-payment of filing fees and assessments in future Democratic primary elections;

(d) Is unable, due to his poverty, to pay the filing fees and assessments on behalf of candidate Theodore H. Wischkaemper.

41. There is hereby incorporated by reference as a part of this stipulation, the testimony upon direct and cross-examination, as well as questions by the Court presented at the hearing held before the Court, April 3, 1970, at Dallas, Texas.

Signed this 21st day of August, 1970.

WILLIAM J. CRAIG
Capitol Station
Austin, Texas 78711

CHARLES F. HERRING
900 Perry-Brooks Bldg.
Austin, Texas 78701
ESTIL VANCE, JR.
1800 First National Bank Bldg.
Fort Worth, Texas 76102
MARK F. HOWELL
508 Southwest National Bank Bldg.
El Paso, Texas 79901
Attorneys for All Defendants

(Signature)
MARK F. HOWELL
JOHN FASHING
608 Southwest National Bank Bldg.
El Paso, Texas 79901
A. L. CROUCH
109 N. Taylor Street
Fort Worth, Texas
H. AVERIL SWEITZER
5th Floor, Manor House
Dallas, Texas
Attorneys for All Plaintiffs
(Signature)
JOHN FASHING

EXHIBIT "A"

ASSESSMENTS OF CANDIDATES FOR DEMOCRATIC PRIMARY
EL PASO COUNTY
MAY 2, 1970

1. All indicated salaries are those which will be paid in 1970, assuming the present pay scale is maintained, except that the indicated salaries of Justices of the Peace are those paid to each by the County of El Paso during 1969.

2. Except for representatives to the legislature whose filing fees of $150.00 are fixed by the Election Code, the assessment for each office is 17% of the assessed salary.

Office	Salary	Assessed Salary	Assessment
County Clerk	$14,400.00	$14,400.00	$2,448.00
County Treasurer	9,600.00	9,600.00	1,632.00
County Surveyor	None	None	None
County Courts at Law	14,400.00	14,400.00	2,448.00
County Judge	14,400.00	14,400.00	2,448.00
County Commissioner	8,380.00	8,380.00	1,424.60
34th District Court	23,900.00	3,984.00	677.28
District Attorney	17,500.00	2,917.00	495.89
Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2.			
120th District Court	23,900.00	23,900.00	4,063.00
171st District Court	23,900.00	23,900.00	4,063.00
168th District Court	23,900.00	23,900.00	4,063.00
Note: This office covers three Counties and is for the 2 year balance of a 4 year term. For assessment the salary is divided by 3 and then again by 2.			
District Clerk	14,400.00	14,400.00	2,448.00
Justices of the Peace:			
Precinct 1, Place 2	9,600.00	9,600.00	1,632.00
Precinct 2	8,622.00	8,622.00	1,465.74
Precinct 3	7,991.00	7,991.00	1,358.47
Precinct 4	4,067.00	4,067.00	691.39
Precinct 5	6,792.00	6,792.00	1,154.64
Precinct 6	5,801.00	5,801.00	986.17
Precinct 7	22,720.00	22,720.00	3,862.40
Precinct 8	10,926.00	10,926.00	1,857.42
U. S. Representative 16th Congressional District	42,500.00	3,864.00	656.88
Note: This office covers 11 Counties. For assessment the salary is divided by 11.			

EXHIBIT "B"

EL PASO COUNTY
DEMOCRATIC PARTY
508 Southwest Bank Building
EL PASO, TEXAS 79901
Telephone 533-6622

February 10, 1970

Mr. William (Bill) Pate
8705 Marble Drive
El Paso, Texas

Dear Mr. Pate:

You are advised that the County Democratic Executive Committee has established a filing fee for the office of County Commissioner, Pct. 4 in the amount of $1,424.60.

In order to insure your position on the ballot, it will be necessary to pay your assessment on or before February 23, 1970, at this office.

Since your original deposit was $50.00, the amount that must be paid is $1,374,60.

Sincerely,
DEMOCRATIC HEADQUARTERS
George A. McAlmon
County Chairman

Note: Please use cash, certified check or money order.

PROOF ON ASSESSMENT
2/10/70

February 6, 1970

TO: TRAVIS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE
FROM: Robert Sneed

The following is the report of the Subcommittee on Assessments in accordance with the Election Code. Please remember the meeting of the Executive Committee at 5:30 P.M., Monday, February 9, 1970.

1970 ESTIMATED ELECTION BUDGET

1. Cost of 1968 Election			
a. Labor	$22,858.59		
b. Other costs	9,689.74		
		$32,548.33	
2. Plus 12% increase of other costs		1,162.77	
3. Plus increase by reason of additional precincts		2,080.95	
4. Increase caused by raising payment for labor from $1.25 to $1.50 per hour		4,771.71	
5. Allowance for overage and failure to pay assessment		13,704.97	
			$54,268.73
Income:			
Total salaries per candidate for offices sought within filing deadline—$1,204,927.33			
Recommended assessment @ 4½%	$54,221.73		
Less: Collected	1,543.70		
		$52,678.03	
Plus: Other funds collected		1,590.70	
			$54,268.73

Position-Name	Salary	Assessment	Paid	Balance
District Clerk—(14,000)				
O. T. Martin, Jr.	56,000.00	2,520.00	50.00	2,470.00
County Clerk—(14,000)				
Doris Shorpshire	56,000.00	2,520.00	50.00	2,470.00
Marguerite Langston	56,000.00	2,520.00	50.00	2,470.00
Rubert Ceder	56,000.00	2,520.00	50.00	2,470.00
Gene Burchard	56,000.00	2,520.00	50.00	2,470.00
County Judge—(13,480)				
J. H. Watson	71,200.00	3,204.00	50.00	3,154.00
Bob Kuhn	71,200.00	3,204.00	50.00	3,154.00
Judge, Co. Ct. at Law #1—(16,500)				
Jerry Dellana	66,000.00	2,970.00	50.00	2,920.00
Judge, Co. Ct. at Law #2—(16,500)				
David S. McAngus	66,000.00	2,970.00	50.00	2,920.00
County Treasurer—(12,350)				
Johnny Crow	49,400.00	2,223.00	50.00	2,173.00

County School Supt.—(14,000)				
F. W. "Joe" Horton	56,000.00	2,520.00	.50.00	2,470.00
County Surveyor—(—0—)				
Marlton O. Metcalfe, Sr.	—0—	—0—	—0—	—0—
Co. Com., Prec. 2—(12,500)				
N. L. Gault	50,000.00	2,250.00	50.00	2,200.00
Co. Com., Prec. 4—(12,500)				
Richard Moya	50,000.00	2,250.00	50.00	2,200.00
Lawson Boothe	50,000.00	2,250.00	50.00	2,200.00
Paul Tovar	50,000.00	2,250.00	50.00	2,200.00
JP, Prec. 1—(840)				
S. F. Glass	3,360.00	151.20	50.00	101.20
Howard Davis	3,360.00	151.20	50.00	101.20
JP, Prec. 2—(1,800)				
Bill Sandifer	1,800.00	81.00	50.00	31.00
JP, Prec. 3, Pl. 2—(10,500)				
Don Cantrell	42,000.00	1,890.00	50.00	1,840.00
Mrs. Mary O'Connor Wilkov	42,000.00	1,890.00	50.00	1,840.00
JP, Prec. 4—(1,800)				
Vernon Pfluger	7,200.00	324.00	50.00	274.00
O. C. Garner	7,200.00	324.00	50.00	274.00
JP, Prec. 5—(10,500)				
Frank McBee	42,000.00	1,890.00	50.00	1,840.00
Mrs. Edith Roberts	42,000.00	1,890.00	50.00	1,840.00
JP, Prec. 6—(5,400)				
John K. Ross, Jr.	21,600.00	972.00	50.00	922.00
District Judge, 147th—(27,000)				
Mace B. Turman, Jr.	108,000.00	4,860.00	143.70	4,716.30
State Rep., Pl. 1—				
Harold Davis		—0—	143.70	—0—
James "Ted" Nuse		—0—	143.70	—0—
David Marks		—0—	143.70	—0—
State Rep., Pl. 2—				
Durward Curlee		—0—	143.70	—0—
State Rep., Pl. 3—				
Don Cavness		—0—	143.70	—0—
State Rep., Pl. 4—				
Wilson Foreman		—0—	143.70	—0—
Dean R. Rindy		—0—	143.70	—0—
Bill English		—0—	143.70	—0—
George B. Shepherd, Jr.		—0—	143.70	—0—
Gayle Essary		—0—	143.70	—0—
Robert Everett L. Looney		—0—	143.70	—0—
U. S. Congressman—(42,500)				
J. J. "Jake" Pickle (divided by 12)	7,083.33	318.75	50.00	268.75
State Bd. of Ed.—				
Walter R. Koch	—0—	—0—	5.00	—0—
Mrs. J. Sam Winters	—0—	—0—	5.00	—0—
Co. Chmn.—				
Robert C. Sneed	—0—	—0—	—0—	—0—
Co. Com., Prec. 1—				
Otto Mittag	26,042.00	1,171.89	50.00	1,121.89
W. D. Dittlinger	26,042.00	1,171.89	50.00	1,121.89
	$1,204,927.33	$54,221.73	$ 3,134.40	$52,678.03

I.

INCOME

Name	Total Paid	Refund 43.7464%
Harold Davis	143.70	62.88
James "Ted" Nuse	143.70	62.88
David Marks	143.70	62.88
Durward Curlee	143.70	62.88
Don Cayness	143.70	62.88
Robert Everett L. (Bob) Looney	143.70	62.88
Dean R. Rindy	143.70	62.88
Bill English	143.70	62.88
Gayle Essary	143.70	62.88
Wilson Foreman	143.70	62.88
George B. Shepherd, Jr.	143.70	62.88
Walter R. Koch	5.00	2.19
Mrs. Sam Winters	5.00	2.19
Mace B. Thurman, Jr.	4,860.00	2,126.08
Bob Kuhn	3,204.00	1,401.64
J. H. Watson	3,204.00	1,401.64
Jerry Dellana	2,970.00	1,299.27
David S. McAngus	2,970.00	1,229.27
O. T. Martin, Jr.	2,520.00	1,102.41
Doris Shropshire	2,520.00	1,102.41
Rubert Ceder	2,520.00	1,102.41
Emilie Limberg	50.00	21.87
Gene Burchard	50.00	21.87
Marguerite Langston (by Brown)	50.00	21.87
Johnny Crow	2,223.00	972.48
F. W. Joe Horton	2,520.00	1,102.41
Otto Mittag	50.00	21.87
David W. Samuelson	1,171.89	512.66
T. L. (Tommie) Wyatt	1,171.89	512.66
Dan Killen	1,171.89	512.66
W. D. Dittlinger	1,171.89	512.66
N. L. Gault	2,250.00	984.30
Richard Moya	2,250.00	984.30
Paul Tovar	2,250.00	984.30
Lawson Boothe	2,250.00	984.30
Don Cantrell	1,890.00	826.80
Mrs. Mary O'Connor Wilkov	1,890.00	826.80
Frank W. McBee	1,890.00	826.80
Edith Roberts	1,890.00	826.80
John K. Ross, Jr.	972.00	425.22
Bill Sandifer	81.00	35.44
Howard Davis	151.20	66.15
S. F. Glass	151.20	66.15
Oscar Garner	324.00	141.74
Vernon M. Pfluger	324.00	141.74
J. J. "Jake" Pickle	318.75	139.44
	$54,871.41	
Bob Kuhn (Recount) Income	900.00	
	$55,771.41	
Less: Recount expenses & Refund	900.00	
	$54,871.41	
Less: Costs of election	30,866.93	
	$24,004.48	$24,004.48

TOTAL EXPENSES

General expense	$ 8,868.31
Labor 1st Primary	17,404.77
Labor 2nd Primary	4,181.25
Rent 1st Primary	293.10
Rent 2nd Primary	119.50
	$30,866.93

SUMMARY

Income	$54,871.41
Plus: Recount income	900.00
	$55,771.41
Less: Recount expense and refund	900.00
	$54,871.41
Less: Election expenses	30,866.93
Balance for refund	$24,004.48
% of refund	43.7464%

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN McLENNAN COUNTY

	Annual Sarlary	Assessment	Refund
County Clerk	$13,764.00	$ 2,064.60	$ 1,259.41
County Treasurer	8,202.00	1,230.30	750.48
County Courts at Law	13,764.00	2,064.60	1,259.41
County Judge	14,400.00	2,160.00	1,317.60
County Commissioner, No. 4	13,428.00	1,789.20	1,091.41
54th District Court	22,700.00	3,405.00	2,077.05
170th District Court	22,700.00	3,405.00	2,077.05
County Commissioner, No. 2	13,428.00	1,550.64	945.89
District Attorney	14,400.00	1,872.00	1,141.92
District Clerk	13,764.00	2,064.60	1,259.41
Justice of Peace			
Precinct No. 1	8,000.00	1,200.00	732.00
Precinct No. 2	2,094.00	272.22	166.05
Precinct No. 3	2,904.00	435.60	265.72
Precinct No. 4	774.00	116.10	None filed
Precinct No. 5	2,904.00	435.60	265.72
Precinct No. 6	1,284.00	192.60	117.49
Precinct No. 7	888.00	133.00	81.25
County School Superintendent	17,580.00	2,637.00	1,608.57

Used Paper Ballots

WALTER J. WILLIAMS
Chairman of Democratic Executive Committee of McLennan County, Texas

EXPENSE REPORT

Democratic Primaries 1970

Received from Candidates

Name	Paid	Refund
B. J. Allen	$ 435.60	$ 265.72
George Allen	2,064.60	1,259.41
Carl Anderson	3,405.00	2,077.05
Jim Bock	1,872.00	1,141.92
Frank Denny	2,064.60	1,259.41
Lane Denton	150.00	30.00
Merle H. Dooley	1,872.00	1,141.92
Martin Eichelberger	1,872.00	1,141.92
L. B. Fulp	133.20	81.25
Ed H. Grimm	435.60	265.72
Howard E. Grubb	1,550.64	945.89
Joe R. Hatcher	2,637.00	1,608.57
Mickey Holmes	150.00	30.00
Johnnie Hunt	1,230.30	750.48
Joe N. Johnson	1,200.00	732.00
B. W. Kittrell	50.00	30.50
Neil Koos	50.00	30.50
Joe Lechler	1,789.20	1,091.41
C. L. (Pete) Middlebrook	2,064.60	1,259.41
Raymond R. Mormino	3,405.00	2,077.05
Tom Moore Jr.	150.00	30.00
Roy E. Nail	1,550.64	945.89
W. R. Poage	386.36	235.68
Bob Salter	87.90	17.58
John Shannon	272.22	166.05
Milton Stabeno	50.00	30.50
Dick Tandy	150.00	30.00
Bob L. Thomas	2,160.00	1,317.60
J. B. Vandiver	192.60	117.49
Wiley W. Warren	272.22	166.05
Murray Watson Jr.	75.00	15.00
	$33,777.28	$20,291.97

Receipts

From Candidates	$33,777.28
From Gen. Tire & Rubber*	62.00
On hand 7-1-69	180.55
Total receipts	$34,020.83

Disbursements

Meals	$ 74.88
Ballots, 1st Primary	813.07
Overprinting etc.	689.30
Daters, rubber stamps	38.95
Envelopes	10.90
Voter Registration Pads	35.95
Party Signs etc.	35.85
Postage	35.22
Judges, 1st Primary	11,015.25
Chairs, Waco Rental	5.21
Waco School Janitors	201.22
Incidentals—Xerox etc.	18.46
Secretarial help	100.00
Walter J. Williams	200.00
Car expense, telephone	300.00
Total expenses	$13,574.26
Refunds to Candidates	20,291.97
	$33,866.23
Bank Balance 7-7-70	$ 154.60

*The Good Citizenship Campaign at General Tire and Rubber Co. gave the committee $62.00.

I, Walter J. Williams, Chairman of the McLennan County Democratic Executive Committee, do hereby certify that the above is a true and correct account of all monies received and disbursed by the County Executive Committee from September 1, 1968 through August 1, 1970, including all expenses for the 1970 Democratic Primaries.

WALTER J. WILLIAMS
County Chairman

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN WICHITA COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$13,200.00	$ 1,584.00—12%	55%, all of them
County Treasurer	10,560.00	1,267.20—12%	
County Courts at Law	17,620.00	2,114.40—12%	
County Commissioner	13,200.00	1,320.00—10%	if he has one opponent
District Court	24,620.00	2,954.40—12%	
District Clerk	13,200.00	1,584.00—12%	
Justice of Peace Precinct No. 1	7,200.00	720.00—10%	(has one opponent)

Precinct No. 2	3,300.00	264.00— 8%	(has over one opponent)
Precinct No. 3	3,600.00	288.00— 8%	(has over one opponent)
Precinct No. 4	3,600.00	288.00— 8%	(has over one opponent)

Used Paper Ballots

A. F. EDWARDS
Chairman of Democratic Executive
Committee of Wichita
County, Texas

Held no second primary except in three small boxes for justice of the peace. I will send you a copy of my report to county clerk soon as I can.

A. F. EDWARDS

DEMOCRATIC HEADQUARTERS
Wichita County and 13th Congressional District
2160 Avenue H, Wichita Falls, Texas 76309

Mr. William J. Craig
Assistant Attorney General
Austin, Texas
Dear Sir,

I am enclosing a copy of the financial report of the Democratic Executive Committee on the primary fund for this year, which may be of some help to you in studying our problem.

For a long time I have thought the assessments for the primary elections are unduly heavy, and tend to discourage those who can't afford it from running for office.

We have usually assessed them just what it takes to do the job, as estimated from the number of candidates, and past experience. It has run all the way from 5½% to 13½% of the annual salary, with refunds from 25%, to 55% this year with a limited run-off.

This year we assessed 12% if no opponent, 10% if one opponent, and 8% if more than that. It so happened that no county wide office was contested this year, and only one candidate for district judge, where the big money is.

I taught government for 30 years in Midwestern University, and have been on the Democratic Executive Committee now for 40 years, chairman for six years. I have thought for a long time that the primaries should be paid for as are the general elections, same election officials, for both primaries, giving the voter whichever ballot he wants, or is entitled to, if registered at the courthouse with party affiliation, as he should be. I hope the legislature passes such a law.

Sincerely,
A. F. EDWARDS

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970
FOR COUNTY OFFICES IN SMITH COUNTY

	Annual Sarlary	Assessment	Refund
County Clerk	$13,000.00	$ 1,560.00	$ 388.09
County Treasurer	7,590.00	910.80	226.83
County Courts at Law	15,000.00	1,750.00	447.83
County Judge	20,700.00	2,484.00	618.06
County Commissioner	13,000.00	1,560.00	388.09
2 Counties—Unexpired Term			
114th District Court	26,000.00	390.00	97.02
District Attorney	15,000.00	1,800.00	448.25
District Clerk	13,000.00	1,560.00	388.09
Justice of Peace			
Precinct No. 2	1,800.00	216.00	53.90
Precinct No. 3	2,400.00	288.00	71.87
Precinct No. 4	3,600.00	432.00	107.81

Precinct No. 5	2,400.00	288.00	59.29
Judge Dom. Rel Court	20,000.00	2,400.00	597.40
Both paper ballots and voting machine			

DORIS G. STANLEY
Secretary of Democratic Executive Committee of Smith County, Texas

THE STATE OF TEXAS
COUNTY OF SMITH

TO THE HONORABLE ERNEST CHRISTIAN, County Clerk of Smith County, Texas:

Comes now J. BURNS BROWN, Chairman of the Democratic Executive Committee of said County, pursuant to the provisions of Article 13.18 of the Texas Election Code, and files this financial report of all monies received and expended by said Committee in connection with the holding of the first and second Democratic Primary Election, 1970, and of all money on hand, such report being as follows:

Balance carried over from 1968	$ 55.16
Proceeds from sale of unused supplies	42.00
Filing fees collected from candidates	18,745.44
PRIMARY FUND	$18,842.60
LESS total expenditures in holding Primaries (Exhibit "A" attached hereto for details)	13,598.03
BALANCE	$ 5,244.57
LESS allowance for County Chairman (Article 13.18, Texas Election Code—5% of net election costs as shown by Exhibit "A" attached)	677.80
NET BALANCE IN PRIMARY FUND	$ 5,566.77
LESS refund to candidates (Exhibit "B" attached)	4,401.77
BALANCE ON HAND	$ 75.00

J. BURNS BROWN, Chairman,
Democratic Executive Committee
of Smith County, Texas.

THE STATE OF TEXAS
COUNTY OF SMITH

BEFORE ME, the undersigned authority, on this day personally appeared the said J. BURNS BROWN, who being by me duly sworn, stated that the above financial report, including the attached Exhibits, is true and correct, to certify which witness my hand and seal of office this the 21st day of July, A.D. 1970.

DORIS G. STANLEY
Notary Public in and for
Smith County, Texas.

DISBURSEMENTS

1. Stamps, checkbooks, envelopes, postage	$	94.92
2. Rent, custodial service, utilities		1,432.35
3. Election supplies and materials		1,796.68
4. Transporting voting machines		484.00
5. Notary expense		16.18
6. Pay for Election Judges and clerks at $1.40 per hour plus $5.00 extra to Judges for delivering election returns		9,773.90
TOTAL		$18,598.03

NOTE: At this time several checks are still outstanding; however, these are taken into account in this report.

EXHIBIT "A"

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN GRAYSON COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$ 9,880.76	$ 1,673.70	$ 1,171.59
County Treasurer	5,960.40	1,014.77	710.33
County Courts at Law	12,000.00	2,043.02	1,430.11
County Judge	12,230.76	2,082.32	1,457.62
County Commissioner	9,432.00	1,605.81	1,124.06
District Clerk	9,880.76	1,673.70	1,171.59
Justice of Peace			
Precinct No. 2		500.00	350.00
Precinct No. 7		50.00	35.00
Precinct No. 8		100.00	70.00
Used Paper Ballots			

CHARLES E. HUGHES
Chairman of Democratic Executive Committee of Grayson County, Texas

RECEIPTS AND DISBURSEMENT STATEMENT, 1970

RECEIPTS:		
Filing fees collected		$ 4,210.00
DISBURSEMENTS:		
Ballots and supplies	$ 406.00	
Judges & clerical salaries	2,646.00	
Misc'l exp.	362.00	
Refunds	795.00	$ 4,210.00

H. L. WOOLDRIDGE
County Chairman

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN DENTON COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$12,000.00	$ 777.00	$ 116.55
County Treasurer	7,800.00	546.00	81.90
County Courts at Law	12,000.00	777.00	116.55
County Judge	12,000.00	777.00	116.55
County Commissioner	12,000.00	777.00	116.55
158th District Court	20,000.00	1,400.00	210.00
District Clerk	12,000.00	777.00	116.55
Justice of Peace			
Precinct No. 1	7,000.00	490.00	73.50
Precinct No. 3	5,812.00	350.00	52.50
Precinct No. 4	2,194.00	154.00	23.10
Precinct No. 5	1,186.00	84.00	12.60
County School Superintendent		840.00	125.00
Used Paper Ballots			

MRS. LONNIE J. YARBROUGH
Chairman of Democratic Executive Committee of Denton County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN CHAMBERS COUNTY

	Annual Salary	Assessment	Refund
District and County Clerk	$ 9,734.75	$ 973.47	$ 535.40
County Treasurer	8,481.60	848.16	466.48
County Judge	9,734.75	973.47	535.40
County Commissioner	6,758.64	675.86	371.72
District Judge	21,000.00	1,050.00*	577.50
Justice of Peace			
Precinct No. 1	6,000.00	600.00	330.00
Precinct No. 2	5,961.60	596.16	327.88
Precinct No. 3	1,440.00	144.00	79.20
Precinct No. 4	4,800.00	480.00	264.00
Precinct No. 5	6,000.00	600.00	330.00
Used Paper Ballots			

D. W. McLEOD
Chairman of Democratic Executive Committee of Chambers County, Texas

*District Judges assessment based upon 2 county Judicial District, according to Texas Election Code.

The refunds shown here are the preliminary refunds. The final costs of the Primary have not been completely figured. There is a possibility for a very small additional refund.

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN MOTLEY COUNTY

	Annual Salary	Assessment	Refund
District and County Clerk	$ 5,400.00	$ 100.00	$ 20.00
County Treasurer	2,400.00	50.00	10.00
County Judge	6,146.00	100.00	20.00
County Commissioner	1,800.00	50.00	10.00
District Attorney		50.00	10.00
Justice of Peace			
Precinct No. 1	1,800.00	50.00	10.00
District Judge		50.00	10.00
Used Paper Ballots			

FURMAN VINSON
Chairman of Democratic Executive Committee of Motley County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN SOMERVELL COUNTY

	Annual Salary	Assessment	Refund
County and District Clerk	$ 1,400.00	$ 175.00	$ 83.50
County Treasurer	3,000.00	165.00	78.50
County Judge	3,820.00	200.00	95.00
County Commissioner	1,500.00	100.00	47.50
Justice of Peace	1,500.00	75.00	35.00
Used Paper Ballots			

WALTER C. ERNST
Chairman of Democratic Executive Committee of Somervell County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN CARSON COUNTY

All were charged 6% of Annual Salary and then a 42% refund was made

(One office—combined)		Annual Salary	Assessment	Refund
County and District Clerk	(6%)	$ 7,944.00	$ 476.64	$ 200.00
County Treasurer		7,944.00	476.64	200.00
County Judge		7,944.00	476.64	200.00
County Commissioner		7,062.00	423.72	178.00
Justice of Peace				
Precinct No. 1		5,649.00	338.94	142.00
Precinct No. 5		3,177.00	190.62	80.00
Precinct No. 6		3,177.00	190.62	80.00
Used Paper Ballots				

We refund all the left over monies after paying all expenses of supplies and Judges and Clerks.

A. J. WIESER
Chairman of Democratic Executive Committee of Carson County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN WARD COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$ 8,160.00	$ 6,250.00	$ 309.51
County Treasurer	8,160.00	6,250.00	309.51
County Judge	8,160.00	6,250.00	309.51
County Commissioner	6,270.00	6,250.00	309.51
District Clerk	8,160.00	6,250.00	309.51
Justice of Peace			
Precinct No. 1	1,800.00	225.00	122.00
Precinct No. 2	1,800.00	225.00	122.00
Precinct No. 3	1,800.00	225.00	122.00
Precinct No. 4	5,280.00	225.00	111.41
Each Constable	1,200.00	85.00	25.00
Used Paper Ballots			

EDNA JO SCOTT
Chairman of Democratic Executive Committee of Ward County, Texas

ASSESSMENT OF CANDIDATES FO RDEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN VAL VERDE COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$ 9,350.00	$ 510.02	$ 120.90
County Treasurer	3,231.00	226.17	45.23
County Judge	10,549.00	738.43	147.68
County Commissioner	4,434.00	310.38	62.07
District Clerk	7,286.00	510.02	102.00
Justice of Peace			
Precinct No. 2	3,300.00	231.00	46.20
Used Paper Ballots			

Assessment was 7% of years salary. Refund was 20% of assessment.

CHAS. ROE
Chairman of Democratic Executive Committee of Val Verde County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN GALVESTON COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$15,000.00	$ 1,950.00	$ 832.65
County Treasurer	12,000.00	1,560.00	666.12
County Courts at Law	18,000.00	2,340.00	999.18
County Judge	18,000.00	2,340.00	999.18
County Commissioner	12,000.00	1,560.00	666.12
122nd District Court	26,000.00	3,380.00	1,443.26
District Attorney		2,600.00	
District Clerk	15,000.00	1,950.00	848.25
Justice of Peace			
Precinct No. 1B	8,100.00	1,053.00	449.63
Precinct No. 2	4,260.00	600.60	256.46
Precinct No. 3	5,400.00	702.00	299.75
Precinct No. 4	5,400.00	702.00	299.75
Precinct No. 5	8,100.00	1,053.00	449.63
Precinct No. 6	7,500.00	975.00	416.33
Precinct No. 7	5,400.00	702.00	299.75
Precinct No. 8	3,360.00	436.80	186.51
Constable, Pct. 3	3,000.00	195.00	83.27
Constable, Pct. 6	7,260.00	468.00	199.84
Voting Machine			

LLOYD CRISS JR.
Chairman of Democratic Executive Committee of Galveston County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN HIDALGO COUNTY

	Term	Annual Salary	Assessment	Refund
County Clerk	4 yr.	$13,200.00	$ 1,716.00	$ 366.66
County Treasurer	4 yr.	10,605.00	1,378.65	294.58
County Courts at Law	4 yr.	13,200.00	1,716.00	366.66
County Judge	4 yr.	16,200.00	2,106.00	450.00
County Commissioner	4 yr.	9,639.00	1,253.07	267.75
92nd District Court	2 yr.	24,500.00	1,592.50	340.27
District Attorney	4 yr.	13,200.00	1,716.00	366.66
District Clerk	4 yr.	13,200.00	1,716.00	366.66
Justice of Peace, Pl. 1	2 yr.	5,892.00	407.98	87.17
Precinct No. 1, Pl. 2	4 yr.	4,800.00	624.00	133.33
Precinct No. 2	4 yr.	3,600.00	468.00	100.00
Precinct No. 3, Pl. 2	4 yr.	2,520.00	327.60	70.00
Precinct No. 4, Pl. 2	4 yr.	4,200.00	546.00	116.67
Precinct No. 5	4 yr.	4,800.00	624.00	133.33
Precinct No. 6, Pl. 2	4 yr.	6,180.00	803.40	169.53
Precinct No. 7, Pl. 2	4 yr.	5,700.00	741.00	158.33
Precinct No. 8, Pl. 2	4 yr.	6,103.00	793.39	169.53
Public Weigher, Precinct 5		Fees	50.00	10.68
Co. Supt. of Schools	4 yr.	12,000.00	1,560.00	333.33
Voting Machine				
Paper ballots used only for absentee voting				

MORRIS ATLAS
Chairman of Democratic Executive Committee of Hidalgo County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN JEFFERSON COUNTY

	No. of Candidates	Annual Salary	Assessment	Refund
County Clerk	1	$14,400.00	$ 2,400.00	$ 1,008.00
County Treasurer	1	14,400.00	2,400.00	1,008.00
County Courts at Law	2	19,800.00	3,300.00	1,386.00
			Each	Each
County Judge	2	19,400.00	3,233.33	1,359.00
			Each	Each
County Commissioner	2	14,400.00	2,400.00	1,008.00
			Each	Each
58th District Court	1	27,000.00	4,500.00	1,890.00
60th District Court (2-yr. Term)	2	27,000.00	2,250.00	945.00
			Each	Each
172nd District Court	1	27,000.00	4,500.00	1,890.00
Domestic Relations	1	27,000.00	4,500.00	1,890.00
Criminal Dist. Court	1	27,000.00	4,500.00	1,890.00
District Attorney	3	19,800.00	3,300.00	1,386.00
			Each	Each
District Clerk	1	14,400.00	2,400.00	1,008.00
Justice of Peace				
Precinct No. 1, Place 2	1	12,840.00	2,240.00	940.00
Precinct No. 2, Place 2	2	12,840.00	2,240.00	940.00
			Each	Each
Precinct No. 3	4	2,880.00	480.00	201.60
			Each	Each
Precinct No. 4	1	12,840.00	2,240.00	849.99
Precinct No. 5	2	4,920.00	820.00	344.40
			Each	Each
Precinct No. 7	1	12,840.00	2,240.00	940.00
Voting Machine				

GEORGE W. COWART
Chairman of Democratic Executive Committee of Jefferson County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970 FOR COUNTY OFFICES IN DALLAS COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$20,000.00	$ 4,800.00	$ 1,600.00
County Treasurer	19,500.00	4,680.00	1,560.00
County Courts at Law	23,000.00	5,520.00	1,840.00
County Judge	27,000.00	6,480.00	2,160.00
County Commissioner	23,000.00	5,520.00	1,840.00
11th Judicial District Court	28,000.00	6,720.00	2,240.00
2nd Criminal District Court	28,000.00	6,720.00	2,240.00
2nd Domestic District Court	28,000.00	6,720.00	2,240.00
2nd Juvenile District Court	28,000.00	6,720.00	2,240.00
District Attorney	25,000.00	6,000.00	2,000.00
District Clerk	20,000.00	4,800.00	1,600.00
Justice of Peace			
Precinct No. 1	18,000.00	4,320.00	1,440.00
Precinct No. 2	12,700.00	3,048.00	1,016.00
Precinct No. 3	12,700.00	3,048.00	1,016.00
Precinct No. 4	12,700.00	3,048.00	1,016.00
Precinct No. 5	10,700.00	2,568.00	856.00
Precinct No. 6	12,700.00	3,048.00	1,016.00

Precinct No. 7	18,000.00	4,320.00	1,440.00
Precinct No. 8	12,700.00	3,048.00	1,016.00
Voting Machine			

EARL LUNA
Chairman of Democratic Executive
Committee of Dallas
County, Texas

ASSESSMENT OF CANDIDATES FOR DEMOCRATIC PRIMARY MAY 2, 1970
FOR COUNTY OFFICES IN BEXAR COUNTY

	Annual Salary	Assessment	Refund
County Clerk	$15,000.00	$ 4,200.00	$ 1,066.86
County Treasurer	14,000.00	3,920.00	995.73
County Courts at Law	18,500.00	5,180.00	1,315.79
County Judge	22,500.00	6,300.00	1,600.28
County Commissioner	15,000.00	4,200.00	1,066.86
45th District Court	28,000.00	7,840.00	1,991.46
144th District Court	28,000.00	7,840.00	1,991.46
150th District Court	28,000.00	7,840.00	1,991.46
175th District Court	28,000.00	4,230.00	1,074.48
186th District Court	28,000.00	7,840.00	1,991.46
187th District Court	28,000.00	7,840.00	1,991.46
District Attorney	20,500.00	5,740.00	1,458.04
District Clerk	15,000.00	4,200.00	1,066.86
Justice of Peace			
Precinct No. 1, Pl. 2	12,000.00	3,360.00	853.48
Precinct No. 2	8,200.00	2,800.00	1,087.21
Precinct No. 3	8,200.00	2,800.00	1,087.21
Precinct No. 4	8,200.00	2,800.00	1,087.21
Precinct No. 5	8,200.00	2,800.00	1,087.21
County Surveyor		300.00	76.20
Voting Machine			

LEONARD E. DAVIS
Chairman of Democratic Executive
Committee of Bexar
County, Texas

EXHIBIT "A"

U. S. Representative—District 12	$ 6,800.00
U. S. Representative—District 6	1,000.00
State Senator—District 10	300.00
State Senator—District 22	300.00
State Representative—Place 1	300.00
State Representative—Place 2	300.00
State Representative—Place 3	300.00
State Representative—Place 4	300.00
State Representative—Place 5	300.00
State Representative—Place 6	300.00
State Representative—Place 7	300.00
State Representative—Place 8	300.00
Judge, 67th Civil District Court (2 yr. term)	4,450.00
Judge, 141st Civil District Court	8,900.00
Judge, Criminal District Court No. 1	8,900.00
Judge, Criminal District Court No. 3	8,900.00
Judge, Criminal District Court No. 4	8,900.00
Judge, Domestic Relations Court No. 1	8,900.00
Judge, Domestic Relations Court No. 2	8,900.00
Judge, Domestic Relations Court No. 4	8,900.00

District Attorney	7,800.00
Judge, County Court at Law	6,650.00
Judge, County Criminal Court No. 1	6,650.00
Judge, County Criminal Court No. 2	6,650.00
Judge, County Criminal Court No. 3	6,650.00
Judge, County Probate Court	6,650.00
County Judge	6,800.00
District Clerk	6,800.00
County Clerk	6,800.00
County Treasurer	5,325.00
County Surveyor	50.00
County Weigher	50.00
County Commissioner—Precinct 2	6,100.00
County Commissioner—Precinct 4	6,100.00
Justice of the Peace, Precinct 1, Place 2	4,700.00
Justice of the Peace, Precinct 2	4,700.00
Justice of the Peace, Precinct 3	2,900.00
Justice of the Peace, Precinct 4	50.00
Justice of the Peace, Precinct 5	125.00
Justice of the Peace, Precinct 6	300.00
Justice of the Peace, Precinct 7	50.00
Justice of the Peace, Precinct 8	600.00

DEMOCRATIC EXECUTIVE COMMITTEE—EL PASO, TEXAS
SCHEDULE OF AMOUNTS RECEIVED FROM AND AMOUNTS RETURNED TO CANDIDATES

Name	Office	Receipts	Refunds
Wesley Smith,	Sheriff of El Paso County	$ 960.00	$ 427.11
Malcolm McGregor,	State Representative	75.00	20.99
M. V. Ward,	Judge, County Court at Law	1,480.00	414.23
W. L. Fowler,	County Treasurer	960.00	268.69
L. R. Downey,	State Representative	75.00	20.99
F. A. Hill,	Justice of the Peace	1,219.30	341.27
R. E. Cunningham,	Judge 65th Judicial District	1,490.00	417.03
Maude Issaacs,	State Representative	75.00	20.99
Hal Dean,	State Representative	75.00	20.99
Ben Mejia,	Justice of the Peace	1,328.40	371.80
Don Williams,	State Representative	75.00	20.99
John E. Blaine,	State Representative	75.00	20.99
J. W. Callison,	County Commissioner	960.00	268.69
Joe Villa,	Constable, Precinct 1	300.00	83.96
W. L. Black,	State Representative	75.00	20.99
T. H. Apodaca,	Justice of the Peace	225.00	62.97
J. W. Fields,	County Clerk	1,480.00	414.23
John Frizzell,	Sheriff of El Paso County	740.00	207.11
Hans Brockmoeller,	Judge, 120th Judicial District	2,980.00	834.07
J. T. Rutherford,	U. S. Representative	135.84	38.02
J. W. A. Johnson,	District Clerk	1,480.00	414.23
R. E. Bailey,	Sheriff of El Paso County	740.00	207.11
W. R. Adair,	County Commissioner, Precinct No. 4	960.00	268.69
J. T. Bean,	County School Superintendent	1,960.80	548.80
Toms Mays,	County Commissioner, Precinct No. 4	960.00	268.69
Rod Davenport,	County Commissioner, Precinct No. 2	960.00	268.69
R. E. Wilson,	State Representative	75.00	20.99
Harold Duncan,	Justice of the Peace	353.74	99.00
R. E. Crawford,	Judge, County Court at Law	1,480.00	414.23
C. J. Burk,	Sheriff of El Paso County	740.00	207.11
Anita Blair,	State Representative	75.00	20.99
Ken Braxton,	County Judge	1,780.00	498.20

Woodrow Bean, County Judge	1,780.00	498.20
O. P. Ford, Justice of the Peace	1,035.90	289.93
Mauro Rosas, State Representative	75.00	20.99
Charles Windberg, Justice of the Peace	960.00	268.69
D. F. White, Justice of the Peace	1,867.50	522.69
Louis Carson, Sheriff of El Paso County	740.00	207.11
C. Ybarra, Constable, Precinct 1	300.00	83.96
F. E. Wilson, County Commissioner, Precinct No. 2	960.00	268.69
W. E. Hall, County Clerk	1,480.00	414.23
C. W. Foster, Constable, Precinct 1	300.00	83.96
Louis C. Landon, County Surveyor	.20	
Alan Fraser, Associate Justice	206.76	
Holvey Williams, Associate Justice	206.76	
W. G. Abbot, Associate Justice	206.76	
TOTALS	$36,466.96	$10,191.29

Subject to comments attached.

EL PASO COUNTY DEMOCRATIC EXECUTIVE COMMITTEE
SCHEDULE OF AMOUNTS RECEIVED FROM AND AMOUNTS RETURNED TO CANDIDATES

Name	Office	Deposit	Refunded	To be Refunded
William E. Ward	34th District Judge	$ 1,073.00	$ 418.06	$ 11.24
Robert E. Cunningham	65th District Judge	3,220.00	1,254.19	33.73
Charles W. (Chuck) Foster	Constable Precinct No. 1	1,000.00	421.75	11.35
Dick F. Davis	County Commissioner, Precinct No. 1	1,534.00	597.59	16.07
Texas S. Ward	Justice of the Peace, Precinct No. 1, Place 1	1,200.00	467.25	12.56
William S. Clayton	Dist. Attorney, 34th Dist.	800.00	312.32	8.40
Jack Fant	County Attorney	2,200.00	857.03	23.03
Frank Owen	State Senate, 29th Dist.	75.00	29.51	.79
Jim C. Langdon	Chief Justice, Court of Civil Appeals	297.60	—	—
David E. Mulcahy	41st District Judge	3,220.00	1,254.19	23.05
R. E. Bailey	Sheriff	2,200.00	857.03	23.05
Alfredo Arrigucci	Constable, Precinct No. 4	276.00	106.97	2.88
Gene Strachan	Constable, Precinct No. 5	276.00	106.97	2.88
John E. (Red) Blaine	State Representative, Place 2	75.00	29.51	.79
R. R. Deason	County Tax Assessor	2,400.00	934.49	25.13
Maud Isaacs	State Representative, Place 1	75.00	29.51	.79
Dick Wilson	Justice of the Peace, Precinct 7	75.00	29.51	.79
Rogelio Sanchez	County Commissioner, Precinct 3	1,534.00	597.59	16.07
J. T. Rutherford	U. S. Representative, 16th District	236.84	93.45	2.52
Baker S. Etheridge	County Commissioner, Precinct 3	1,534.00	597.59	16.07
Malcolm McGregor	State Representative, Place 4	75.00	29.51	.79
Willis C. Nabhan	Constable, Precinct 7	276.00	106.97	2.88
Tony Apodaca	County Commissioner, Precinct 3	1,534.00	597.59	16.07
Pat Guerra	Constable, Precinct 5	276.00	106.97	2.88
Ben Nunez	Constable, Precinct 8	276.00	106.97	2.88
Ray Marantz	County Commissioner, Precinct 1	1,534.00	597.59	16.07
Mauro Rosas	State Representative, Place 3	75.00	29.51	.79
Ben Mejia	Justice of Peace, No. 8	1,261.50	491.84	13.23
Antonio Trujillo, Sr.	Constable, Precinct 4	276.00	106.97	2.88
John A. Morce	Constable, Precinct 6	276.00	106.97	2.88
L. R. Downey	State Representative, Place 1	75.00	29.51	.79
Victor Beltran	Constable, Precinct 2	276.00	106.97	2.88
Martin Apodaca	Constable, Precinct 3	276.00	106.97	2.88
A. H. Sanchez	Justice of Peace, Precinct 3	159.60	62.71	1.67

Dan Duke, State Representative, Place 2	75.00	29.51	.79
Don Williams, State Representative, Place 2	75.00	29.51	.79
Pierce Atwater, County Treasurer	1,680.00	655.38	17.62
Totals	$31,557.54	$12,295.96	$ 330.86

EL PASO COUNTY DEMOCRATIC PARTY TRUST FUND FOR FILING FEES
SCHEDULE OF CANDIDATES' FILING FEES RECEIVED, REFUNDED AND PAYABLE
JANUARY 10 THROUGH OCTOBER 30, 1964

	Filing Fees Received	Amount Refunded	Balance to be Refunded
E. Aleman	$ 50.00	$ 19.89	$ .50
C. Anderson	1,657.60	695.97	17.50
L. Anderson	100.00	39.77	1.00
V. Beltran	276.00	119.31	3.00
E. Berliner	933.34	397.70	10.00
J. Blaine	100.00	39.77	1.00
J. Callison	100.00	39.77	1.00
J. Christie	100.00	39.77	1.00
G. Cook	100.00	39.77	1.00
R. Cunningham	3,220.00	1,352.18	34.00
B. Dooley	1,500.00	636.32	16.00
L. Downey	100.00	39.77	1.00
D. Drake	1,657.60	695.97	17.50
R. L. Elliott	2,640.00	1,113.56	28.00
R. R. Elliott	276.00	119.31	3.00
C. Evans	100.00	39.77	1.00
J. Fant	2,400.00	994.25	25.00
C. Foster	1,200.00	497.13	12.50
E. Fuentes	100.00	39.77	1.00
M. Gallegos	276.00	119.31	3.00
G. Garcia	1,029.21	437.47	11.00
L. Gauthier	276.00	119.31	3.00
W. Haddad	100.00	39.77	1.00
F. Hart	1,080.00	457.36	11.50
R. Havekast	155.00	59.66	1.50
M. Isaacs	100.00	39.77	1.00
A. Lara	276.00	119.31	3.00
E. Larkin	276.00	119.31	3.00
M. McGregor	1,500.00	636.32	16.00
D. Mann	100.00	39.77	1.00
B. Mejia	1,029.21	437.47	11.00
B. Moore	1,080.00	457.36	11.50
J. Morce	276.00	119.31	3.00
W. Bosby	50.00	19.89	.50
D. Mulcahy	3,220.00	1,352.18	34.00
R. Muniz	100.00	39.77	1.00
W. Nabhan	276.00	119.31	3.00
B. Nunez	276.00	119.31	3.00
R. Rogers	2,400.00	994.25	25.00
R. Sanchez	1,657.60	695.97	17.50
R. Scroggins	100.00	39.77	1.00
W. Snelson	100.00	39.77	1.00
J. Stockmeyer	100.00	39.77	1.00
G. Stracham	276.00	119.31	3.00
M. Sullivan	2,400.00	994.25	25.00
C. Terrazas	2,640.00	1,113.56	28.00

EL PASO COUNTY DEMOCRATIC PARTY TRUST FUND FOR FILING FEES
SCHEDULE OF CANDIDATES' FILING FEES RECEIVED, REFUNDED AND PAYABLE
JANUARY 10 THROUGH OCTOBER 27, 1966

	Filing Fees Received	Amount Refunded	Balance to be Refunded
A. Alva	$ 100.00	$ 40.00	$ .74
J. G. Bennett	1,676.16	670.46	12.37
E. F. Berliner	4,020.00	1,608.00	29.66
S. Blackham	1,676.16	670.46	12.37
J. E. Blaine	100.00	40.00	.74
B. Boling	934.00	373.60	6.89
H. E. Brockmoller	4,020.00	1,608.00	29.66
R. Burdette	100.00	40.00	.74
S. Callan	2,700.00	1,080.00	19.92
J. Christie	100.00	40.00	.74
A. R. Clark	1,680.80	672.32	12.40
C. Coldwell	2,700.00	1,080.00	19.92
R. E. Crawford	2,400.00	960.00	17.71
H. E. Dean	1,800.00	720.00	13.28
L. R. Downey	100.00	40.00	.74
J. W. Fields	2,400.00	960.00	17.71
A. P. Ford	260.00	104.00	1.92
B. E. Greenwood	1,676.16	670.46	12.37
R. N. Havekast	361.60	144.64	2.67
J. W. A. Johnson	2,400,00	960.00	17.71
I. C. Landon	50.00	20.00	.37
D. Mann	100.00	40.00	.74
O. Medina	50.00	20.00	.37
B. Mejia	1,295.31	518.13	9.56
P. C. Moreno	100.00	40.00	.74
R. Muniz	100.00	40.00	.74
J. M. Navar	1,726.16	690.46	12.74
G. Peinado	100.00	40.00	.74
N. Perez, Jr.	50.00	22.50	.37
A. A. Ratner	100.00	40.00	.74
G. Rodriques	2,400.00	960.00	17.71
A. H. Sanchez	559.70	223.88	4.13
T. Santiestiban	100.00	40.00	.74
R. Scaggins	100.00	40.00	.74
R. Telles	1,676.16	670.46	12.37
D. F. White	990.70	396.00	7.31
R. C. White	1,667.00	666.80	12.30
C. Windberk	900.00	360.00	6.64
B. C. Lewis	936.80	374.72	6.90
R. Gonzales	936.80	374.72	6.90
R. Apadaca	936.80	374.72	6.90
W. R. Barragan	936.80	374.72	6.90
TOTAL	$47,017.11	$18,809.33	$ 346.91

EL PASO COUNTY DEMOCRATIC PARTY TRUST FUND FOR FILING FEES
SCHEDULE OF CANDIDATES' FILING FEES RECEIVED, REFUNDED AND PAYABLE
DECEMBER 10, 1967 THROUGH OCTOBER 25, 1968

	Filing Fees Received	Amount Refunded	Balance to be Refunded
A. Aguirre	$ 900.00	$ 225.00	$ 128.86
E. Aleman	276.00	69.00	39.37
C. Anderson	1,676.00	419.00	239.03
J. J. Armes	276.00	69.00	39.37
L. J. Ayoub	276.00	69.00	39.37
D. Baird	100.00	25.00	14.26
V. Beltran	276.00	69.00	39.37
J. E. Blaine	100.00	25.00	14.26
B. Boling	933.00	233.25	133.08
C. Bush	276.00	69.00	39.37
J. Cano	276.00	69.00	39.37
R. G. Candelaria	780.00	195.00	111.25
J. Christie	100.00	25.00	14.26
M. Daeuble	100.00	25.00	14.26
J. N. Fant	3,980.00	995.00	567.67
C. W. Foster	1,200.00	300.00	171.22
R. J. Galvan	3,980.00	995.00	567.67
J. Gandara	276.00	69.00	39.37
B. J. Hopper	276.00	69.00	39.37
B. R. Howell	2.65	—	—
A. Lara	276.00	69.00	39.37
E. Larkin	1,676.00	419.00	239.06
J. M. Montes	276.00	69.00	39.37
B. Moore	1,800.00	450.00	256.80
P. Moreno	100.00	25.00	14.26
R. Muniz	100.00	25.00	14.26
W. C. Nabhan	276.00	69.00	39.37
M. Nicchio	276.00	69.00	39.37
T. Niland	100.00	25.00	14.26
B. Nunez	276.00	69.00	39.37
H. Pena	2,880.00	720.00	410.77
P. U. Raleigh	276.00	69.00	39.37
R. Ramos	100.00	25.00	14.26
S. Rosen	100.00	25.00	14.26
G. G. Rueda	271.00	67.75	38.65
R. Sanchez	1,676.00	419.00	239.03
T. Santiesteban	100.00	25.00	14.26
C. R. Schulte	3,980.00	995.00	567.67
R. Scoggins	2,280.00	720.00	410.77
E. Seal	271.00	67.75	38.65
D. J. Snooks	900.00	225.00	128.36
M. Sullivan	2,400.00	600.00	342.31
C. Terrazas	2,880.00	720.00	410.77
W. E. Ward	1,327.00	331.75	189.27
R. Whitaker	271.00	67.75	38.65
R. White	2,000.00	500.00	285.26
C. J. Ybarra	276.00	69.00	39.37
TOTALS	$43,803.65	$10,950.25	$ 6,247.42

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

CA 3-3744-C — 3733-C

CA 3-3739-C

(Title omitted in printing)

STIPLULATION OF FACT

The Plaintiffs and Defendants in the above styled and numbered causes, do hereby stipulate as follows:

1. That the below listed list of officer's salaries for each year are as shown:

Salaries of State Officers

Governor — $55,000
Lt. Governor — $4,800
Attorney General — $29,000
State Treasurer — $29,000
Commissioner of General Land Office — $29.000
State Comptroller — $29,000
Supreme Court Judge — $29,000
Court of Criminal Appeals Judge — $29,000
State Agriculture Commissioner — $29,000
State Railroad Commissioner — $29,000
Court of Civil Appeals Judge — $26,000

Signed this 6th day of October, 1970.

WILLIAM J. CRAIG
Capitol Station
Austin, Texas 78711
CHARLES F. HERRING
900 Perry-Brooks Bldg.
Austin, Texas 78701

ESTIL VANCE, JR.
1800 First National Bank Bldg.
Fort Worth, Texas 76102
MARK F. HOWELL
508 Southwest National Bank Bldg.
El Paso, Texas 79901
Attorneys for All Defendants

(Signature)
WILLIAM J. CRAIG
JOHN FASHING
608 Southwest National Bank Bldg.
El Paso, Texas 79901
A. L. CROUCH
109 N. Taylor Street
Fort Worth, Texas
H. AVERIL SWEITZER
5th Floor, Manor House
Dallas, Texas
Attorneys for All Plaintiffs

(Signature)
JOHN FLASHING

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

CA 3-3744-C — 3733-C

CA 3-3739-C

(Title omitted in printing)

STIPULATION OF FACT

The Plaintiffs and Defendants in the above styled and numbered causes, do hereby stipulate as follows:

1. It is stipulated and agreed that the records of the County Clerk of Tarrant County, Texas, reflect that in Tarrant County the following offices were decided by run-off primaries held in the Democratic Primary in June in the following respective offices during the years 1958-68.

1958, Justice of the Supreme Court of Texas, District Clerk of Tarrant County, Texas, Judge of the Probate Court of Tarrant County, Texas, County Treasurer, Tarrant County, Texas, Representatives State House of Representatives, Place 1, 2, 4, 6, and Precinct Chairman, Tarrant County, Texas, Precinct 60 and 122.

1960, Judge, Court of Criminal Appeals, State of Texas, State House of Representatives, Place 1, 2, 6, 7, Sheriff, Tarrant County, County Commissioner, Precinct 3, Tarrant County, Constable, Precinct 4, Tarrant County, Constable, Precinct 7, Tarrant County, Precinct Chairman, Precinct 63, Precinct Chairman, Precinct 82, Precinct Chairman, Precinct 148.

1962, Governor for the State of Texas, Lieutenant Governor of Texas, Attorney General of Texas, Congressman at Large, Representatives, State House of Representatives, Place 1, 3 and 7, District Attorney, Tarrant County, Probate Judge, Tarrant County, District Clerk of Tarrant County, Justice of the Peace, Precinct 2, Tarrant County, Precinct Chairman for Precincts 14 and 140, Tarrant County, Texas.

1964, United States Congress, Congressman at Large, State Representative, State House of Representatives, Place 2.

1966, Attorney General of Texas, County Chairman, Tarrant County Democratic Party, Commissioner, Precinct 2, Tarrant County, Commissioner, Precinct 4, Tarrant County.

1968, Governor for the State of Texas, County Democratic Chairman, Tarrant County, Precinct Chairman, Precinct 64.

Signed this the 19th day of October, 1970.

WILLIAM J. CRAIG
Capitol Station
Austin, Texas 78711
CHARLES F. HERRING
900 Perry-Brooks Bldg.
Austin, Texas 78701
ESTIL VANCE, JR.
1800 First National Bank Building
Fort Worth, Texas 76102
MARK F. HOWELL
508 Southwest National Bank Bldg.
El Paso, Texas 79901
Attorneys for Defendants

(Signature)
MARK F. HOWELL
JOHN FASHING
608 Southwest National Bank Bldg.
El Paso, Texas 79901
A. L. CROUCH
109 North Taylor St.
Fort Worth, Texas
H. AVERIL SWEITZER
5th Floor, Manor House
Dallas, Texas
Attorneys for Plaintiffs

(Signature)
JOHN FASHING

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C
3-Judge

VAN PHILLIP CARTER
versus
MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C
3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED
versus
ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUGIN JENKINS, INTERVENOR

CA 3-3739
3-Judge

WILLIAM PATE. ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED
versus
GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS
AND INDIVIDUALLY AND THE COUNTY DEM-
OCRATIC EXECUTIVE COMMITTEE OF EL
PASO COUNTY, TEXAS AND THE PRIMARY
COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA
L. SIFUENTES and MANUEL SAPIEN, on behalf

of themselves and all others similarly situated, and as members of U.N.I.O.N, Incorporated,
INTERVENORS

Before THORNBERRY, Circuit Judge, and HUGHES and TAYLOR, District Judges

TAYLOR, District Judge

In the above cases, the plaintiffs seek an injunction to restrain the enforcement of Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15 and 13.16 (1967)[1] and to have them declared unconstitutional.

> Art. 13.08 authorizes the county committee to make an assessment of the costs of running the primary and to apportion the cost in such a manner as in their judgment is just and equitable among the various candidates except for certain offices such as state senator and representative. "In making the assessment upon any candidate, the committee shall give due consideration to the importance, emolument, and term of office for which the nomination is to be made."
>
> Art. 13.08a provides for a maximum allowable assessments that can be made by the committees in counties according to the population.
>
> Arts. 13.15 and 13.16 regulate the filing fees for certain statewide offices.

These articles require candidates to pay filing fees as a condition to having their names placed on a ballot in a primary election.

The parties have stipulated that Plaintiff William Pate meets all qualifications to be a candidate in the Democratic Primary Elections for the office of County

[1]Art. 13.07a provides that a candidate for a state office must pay a deposit of $50.00 to the county chairman at the time he applies for a place on the ballot.

Commissioner of Precinct Four for El Paso County, Texas, except that he cannot pay the $50.00 deposit nor the $1424.00 assessment. Likewise, Plaintiff Theodore Wischkaemper meets all of the qualifications for County Judge of Tarrant County, Texas, except that he has not paid the $6,300.00 assessment fee.

Plaintiff Carter's application to be placed on the ballot for the office of Commissioner of the General Land Office was denied by the State Democratic Executive Committee because it was not notarized,[2] it was not accompanied by a filing fee,[3] and it was not accompanied by a notarized loyalty affidavit.[4]

In addition to the plaintiffs, Reubin Jenkins has been allowed to intervene as a voter who wished to vote for plaintiff Wischkaemper and Carlos Guzman, et al. have asked to be allowed to intervene as voters who desired to vote for Plaintiff Pate. The latter will be allowed to intervene. Fed. R. Civ. P. 24 (a) (2).

Plaintiffs claim that the filing fees deprive them of their right to run for office in violation of the due process and equal protection clauses of the Fourteenth Amendment because they cannot afford to pay the required fees. Intervenors claim that the filing fees deprive them of their right to vote for a candidate of their own choice in violation of the same sections of the Constitution. Specifically, it is alleged that the assessments are (1) exorbitant, arbitrary, capricious, irrelevant, unreasonable, outrageously high, (2) without any reasonable relation to any legitimate legislative purpose and not germane to one's ability to participate intelligently in the electoral process, and (3)

---

[2]Tex. Election Code Ann. Art. 13.12 (1967).

[3]Tex. Election Code Ann. Art. 13.08 (1967).

[4]Tex. Election Code Ann. Art. 6.02 (1967).

discriminatory, in that some offices are assessed higher amounts than others.

A three-judge court was convened on April 3, 1970 in accordance with 28 U.S.C. § 2281 to hear the Plaintiffs' request for a preliminary injunction. The court allowed the names of Plaintiffs Pate and Wischkaemper to be placed upon the ballot without the payment of any fee. No fee would have to ever be paid if, on final determination of the merits, their claims are accepted by the court; but, should the court reject their claims, they would then be required to pay the challenged fees. Relief was denied as to Plaintiff Carter because he has not complied with filing requirements unrelated to filing fees and assessments. Neither Pate nor Wischkaemper won in their respective primary.

All plaintiffs have stated that they intend to become candidates for state office at the next election period. Even though Plaintiff Carter has failed to meet other requirements in addition to not paying the filing fee, the court need not pass upon his claim because the relief he seeks is the same as that sought by Plaintiffs Pate and Wischkaemper.

It is undisputed that primary elections of political parties are state action and subject to the Fourteenth Amendment. *Smith v. Allwright,* 321 U.S. 649, 88 L. Ed. 987, 64 S.Ct. 757 (1944).

Since the rights of the intervenors as voters will be determinative of the constitutionality of the laws here attacked, we deem it unnecessary to discuss the rights of the candidates.

The right to vote was defined as a "fundamental political right" in *Yick Wo v. Hopkins,* 118 U.S. 356, 370, 30 L.Ed. 220 (1886). In more recent times the court has said,

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. *Reynolds v. Sims,* 377 U.S. 533, 561-62, 12 L.Ed.2d 506, 84 S.Ct. 1362 (1964).

The *Reynolds* court went further in describing the right to vote, saying it included the right to cast one's vote effectively.[*] The effectiveness of the vote there was quantitative in that it was an apportionment case. In *Williams v. Rhodes,* 393 U.S. 23, 30, 21 L.Ed.2d 24, 89 S.Ct. 5 (1968), the right to cast one's vote effectively was again discussed. The effectiveness of the vote in that case was qualitative in nature rather than quantitative in that the voters were desirous of voting for a specific candidate who espoused their political beliefs.

The right to choose one's candidate is not only a fundamental political right protected by the Fourteenth Amendment, it encompasses the First Amendment right "to associate for the advancement of political beliefs." *Williams v. Rhodes,* supra.

Whenever a First Amendment right is encumbered by the state, the burden is on the state to show that such infringement is necessary to support a compelling state interest.[*] The primary purpose of the

---

[*] "Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature, modern and viable state government needs, and the constitution demands, no less." 377 U.S. at 565.

[*] "'The presumtion of constitutionality and the approval of 'rational' classifications in other types of enactments are based on an assumption that the institutions of state govern-

filing fee assessments under the Texas statutory scheme is to raise revenue. *Campbell v. Davenport,* 362 F.2d 624 (5th Cir. 1966). This "tax" is used by the party to cover the cost of the primary. All monies collected in excess of the cost of the primary are refunded to the candidate.

In order to qualify as a compelling state interest, the law must be shown to be "necessary and not merely rationally related, to the accomplishment of a permissible state policy." *McLaughlin v. Florida,* 379 U.S. 184, 196, 13 L.Ed. 2d 222, 85 S.Ct. 283 (1964). The collection of revenue is, of course, a permissible and legitimate interest but under these circumstances not a compelling state interest. These assessments are not necessary to insure the collection of revenue. Approximately eighteen states do not require candidates to pay any filing fees to support the primary.[1] The State of Texas has been able to find other adequate means

---

ment are structured so as to fairly represent all people. However, when the challenge to the statute is in effect a challenge of this basic assumption, the assumption can no longer serve as the basis for presuming constitutionality." *Kramer v. Union School District,* 395 U.S. 621, 628 (1969).

"[T]he right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. In determining whether the state has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that 'only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting First Amendment freedoms.

"The state has here failed to show any 'compelling interest' which pustifies imposing such heavy burdens on the right to vote and to associate." *Williams v. Rhodes,* 393 U.S., at 31. See "The Supreme Court, 1968 Term," 83 Harv. L. Rev. 60, 93, n. 30 (1969).

[1]Colorado, Indiana, Iowa, Illinois, Kansas, Kentucky, Maine, Massachusetts, Michigan, New Mampshire, New Jersey, New York, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee and Vermont.

of collecting revenue which do not restrict the right to vote.* *United States v. State of Texas*, 252 F.Supp. 234, 252 (W.D.Tex. 1966).

By requiring this "tax" in the form of primary filing fees, the State of Texas has in effect imposed a wealth requirement directly upon the candidate and the voters they seek to represent. A standard of wealth has never been considered as relevant to one's intelligent participation in the electoral process. As the Supreme Court said in *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 668, 16 L.Ed. 2d 169, 86 S. Ct. 1079 (1966).

> We conclude that a state violates the Equal Protection clause of the Fourteenth Amendment whenever it makes the affluence of the voter or the payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying this or any other tax. . . .
>
> * * * *
>
> But we must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process.

The Court does not mean to imply that there is no compelling interest, pursuant to which the State may require a primary filing fee. We have limited our decision here to say that a filing fee violates the First

*The Secretary of State has already presented to the House Interim Committee on Elections proposed election law changes. It recognizes the exorbitant filing fees assessed in some counties and the unworkability of the present system in the future. It recommends that the primary expenses be borne not only by the candidate, but also by the county and state. *Office of the Secretary of State, Proposed Election Law Changes, A report to the 62nd Legislature of the State of Texas*, December 10, 1970.

Amendment and the due process and equal protection clauses of the Fourteenth Amendment when it is used as a revenue collecting device or when made an absolute qualification in order for a candidate to get his name on the ballot. Indeed, there may be other compelling interests which would justify some type of reasonable fee. The *Williams* court recognized that the State could have a compelling interest in regulating the ballot.*

In determining whether the State's interest in exacting a filing fee is sufficiently compelling, "we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Williams v. Rhodes,* supra, p. 30. Here the high fee charged, in the thousands of dollars, for revenue purposes is not sufficient state interest when compared to the burden it places on the voters and their candidates. A "write-in" alternative would not bring about the needed balance on the "individual-state interest" scale and make these fees any more palatable. *Williams v. Rhodes, supra,* and *Jenness v. Little, supra.*

The Court is aware of the fact that in *Wetherington v. Adams, supra,* filing fees for a primary election were upheld as constitutional. The plaintiff in that case

---

**Wetherington v. Adams,* 309 F.Supp. 318 (N.D.Fla., 1970) recognized this interest as a justification for a primary filing fee.

Jenness v. Little, 306 F.Supp. 925 (N.D.Ga., 1969) *appeal dismissed* 397 U.S. 94 (1970), also recognized this as a legitimate and possibly compelling state interest. However, the court there said that it could not be an absolute qualification. If used for this purpose, there should be some alternative provided. A pauper's affidavit and a supporting nominating petition could protect this interest and serve as an alternative to a filing fee.

was a candidate and the issues were decided on the basis of what were his rights vis-a-vis those of the state. While neither approving nor disapproving of the reasoning used or the results reached, we need only say that in the case at bar we have resolved the issues on the rights of the voters. The cases are, therefore, distinguishable.

In granting declaratory relief, we hold that the statutes are unconstitutional because they infringe upon the exercise of voting and associational rights without any compelling justification in violation of the First and Fourteenth Amendments. The State of Texas, through its political parties, will be enjoined from the enforcement of the Texas Election Code sections requiring filing fees and assessments of a candidate in order that his or her name be placed upon a primary ballot.

IN THE UNTED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER
versus
MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED
versus
ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED
versus
GEORGE A. McALMON, JR., CHAIRMAN OF
THE EL PASO COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL.

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA
L. SIFUENTES and MANUEL SAPIEN,
INTERVENORS

Before THORNBERRY, Circuit Judge, HUGHES,
and TAYOR, District Judges.

THORNBERRY, CONCURRING SPECIALLY:

At issue in the instant case is whether the State of Texas through the imposition of primary filing fees has unduly impinged upon the right of its citizens to associate for the advancement of political beliefs and the right of its qualified voters to vote and to cast their votes effectively. Because I am of the belief that it has, I concur in the result of this judgment.

The standard by which the constitutionality of these controverted election code provisions is to be measured is, as the majority points out, the *Williams* test:[1] Bearing in mind that only a compelling state interest can justify a state's limiting First Amendment freedoms, the Court must consider the facts and circumstances behind the law, the interests that the state claims to be protecting, and the interests of those who are disadvantaged by the classification. Accordingly, I examine, first, the interests of those disadvantaged by the provisions, and, secondly, the interests of the State.

At the very core of this dispute lies the First Amendment's guarantee of the right to engage in association

---

[1]Defendants, relying primarily on *Snowden v. Hughes*, 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497 (1944), contend that this Court should not set aside the election code provisions unless they are grounded in a rationale wholly irrelevant to the achievement of a legitimate state interest, or unless they incorporate an element of intentional or purposeful discrimination. It is true that *Snowden* stated that "an element of intentional or purposeful discrimination" needs to be shown to demonstrate a denial of equal protection. *Snowden*, however, has been modified pro tanto by the language of *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968), and by the rationale of *Turner v. Fouche*, 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970), wherein the Supreme Court found a denial of equal protection without an "invidious or purposeful discrimination."

for the advancement of beliefs and ideas[5] and the "fundamental political right" that constitutes the essence of a democratic society and is "preservative of all rights"—the right to vote.[6] In the State of Texas there is simply no way that a person can obtain the Democratic Party nomination other than by paying the filing fee and being elected. The election code includes no provision for nominating petitions at the party level. Moreover, under article 13.09[7] write-in voters may not be counted in primary elections, and no space on the ballot is provided for them. Consequently, voters are deprived of the opportunity to have their candidate considered for the Democratic Party nomination if he cannot post the filing fee.

Since in the overwhelming majority of Texas political offices nomination by the Democratic Party is tantamount to election, it is clear that restriction on entry into the primary may significantly impair the right to cast one's vote effectively. In addition, the right of association is abridged significantly in that a person unable to pay the filing fee must, with the aid of those desirous of supporting him, form a new party or run as an independent: They are precluded by the high filing fee from associating within the established party. Undeniably, then, the State's high primary filing fees impose significant burdens on the right to vote and to associate. The question determinative of this contro-

---

[5] The Supreme Court has repeatedly held that freedom of association is protected by the First Amendment. *See, e.g., Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *United Mine Workers of America, Dist. 12 v. Illinois State Bar Assn.*, 389 U.S. 217, 88 S.Ct. 353, 19 L.Ed.2d 426 (1966); *NAACP v. Button*, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963).

[6] *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S.Ct. 1964, 1071, 30 L.Ed. 220 (1886).

[7] Tex. Election Code Ann. Art. 13.09 (1967).

versy is whether there lies behind the high fees a State interest sufficiently compelling to justify the burdens.

Three State policies allegedly are furthered by this fee system. First, the State contends that the fees serve to limit candidacy to "serious" candidates. To discriminate against voters or candidates on the basis of the depth of their pocketbooks, however, is to wade into unconstitutional waters. *Harper v. Virginia State Board of Elections,* 383 U.S. 663, 86 S. Ct. 1079, 16 L.Ed.2d 169 (1966); *Cipriano v. City of Houma,* 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed.2d 647 (1969); *Turner v. Fouche,* 396 U.S. 346, 90 S.Ct. 532, 24 L.Ed.2d 567 (1970). It is no answer to proclaim that those candidates without substantial financial backing cannot seriously hope to win. The seriousness and legitimacy of a political effort is not to be measured by the bullion with which it is bulwarked. Though modern politics may dictate that low budgets do not win elections, it cannot be doubted that those with low budgets are entitled to try. *Thomas v. Mims,* — F.Supp. —. (S.D. Ala. C.A. No. 5702-69, 1970). Clearly, this first alleged justification is without sufficient merit to warrant the imposition of these burdens.

Secondly, Texas seeks to ground these high fees in the State interest of regulating the ballot to prevent confusion of voters. Although courts have indeed approved the objective of regulating the ballot,[8] the approval has been bestowed within the context of nominal or reasonable fees.[9] Defendants have pointed to

---

[8] *See, e.g., Williams v. Rhodes,* 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Wetherington v. Adams,* 309 F.Supp. 318 (N.D.Fla. 1970); *Jenness v. Little,* 306 F.Supp. 925 (N.D.Ga. 1969), appeal dismissed 397 U.S. 94 (1970).

[9] *See, e.g., Bynum v. Burns,* 8th Cir. 1967, 379 F.2d 229; *Kenneweg v. Allegany County Com'rs,* 62 Atl. 249 (Md. 1905); *Socialist Party v. Uhl,* 103 P. 181 (Cal. 1909); *State*

no instances in which fees of the magnitude here challenged—up to $8,900—have received judicial sanction. The fact that virtually all states assess filing fees smaller by a factor of ten or more than those of Texas, and some states none at all, quite strongly indicates that other states have not found the imposition of exorbitant filing fees a *sine qua non* of regulating the ballot.[7] I do not deny that Texas may have a compelling interest in regulating its ballot, but I am of the opinion that the interest can justify, at the very most, only reasonable fees; it cannot impart validity to the amounts here challenged.

Texas also asserts that the filing fee scheme pays for the primary and thus not only avoids draining the State treasury but also allows Parties to remain entities independent of the State. The justification of keeping the Parties private and unsubjected to State interests is, under the circumstances of this case, not a strong one. The Party's role in conducting the primary is, after all, purely ministerial and quite extensively regulated by the State. Nor, in the light of the interests at stake, would the burden on the State treasury be onerous if Texas were to assume a substantial portion of the primary expenses. Indeed, as the majority points out, eighteen states require of candidates no filing fee to support the primary. Furthermore, although filing fees have been judicially sanctioned on grounds of contribution, defendants have pointed to no cases other than Texas cases that place

---

ex rel. Riggle v. Brodigan, 143 P. 238 (Nev. 1914); *Bodner v. Gray*, 129 So.2d 419 (Fla. 1966); *State v. Nichols*, 97 P. 728 (Wash. 19—); *Wetherington v. Adams*, 309 F.Supp. 319 (1970).

[7] See Office of the Secretary of State, Proposed Election Law Changes, A Report to the 62nd Legislature of the State of Texas, December 10, 1970 at —.

the entire burden of primary expense upon the candidates. If Texas has a compelling interest in requiring primary fees for revenue purposes, the interest can justify no more than requiring a candidate to contribute a reasonable portion of the primary expenses attributable to his candidacy. The fees here challenged clearly do not fall within that ambit and must be invalidated.

I do not here undertake the task of determining what constitutes a reasonable fee. I would emphasize, however, that two of our most precious freedoms are at stake, and thus the dimensions of reasonableness within which the State may safely impose a fee are indeed low and narrow.[*]

---

[*]This is especially true where, as in the instant case, the State has provided no alternative, such as a petition, to the filing fee.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER

vs.

MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED

vs.

ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED

vs.

GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS
AND INDIVIDUALLY AND THE COUNTY DEM-
OCRATIC EXECUTIVE COMMITTEE OF EL

PASO COUNTY, TEXAS AND THE PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LOZANO, ANDREA L. SIFUENTES and MANUEL SAPIEN, on behalf of themselves and all others similarly situated, and as members of U.N.I.O.N., Incorporated,

INTERVENORS

ORDER

For the reason stated in the Opinions filed in the above styled cases, it is ORDERED, ADJUDGED and DECREED that Tex. Election Code Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are hereby declared to be unconstitutional because they infringe upon First Amendment rights without any compelling justification in violation of the First and Fourteenth Amendments and that the State of Texas, through its political parties, is enjoined from the enforcement of Tex. Election Code. Ann. Arts. 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967).

SIGNED and ENTERED this 21st day of December, 1970.

HOMER THORNBERRY, Circuit Judge

SARAH T. HUGHES, District Judge

W. M. TAYLOR, JR., District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CA 3-3635-C

3-Judge

VAN PHILLIP CARTER

vs.

MARTIN DIES, JR. and
DR. ELMER C. BAUM

CA 3-3733-C

3-Judge

THEODORE H. WISCHKAEMPER
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED

vs.

ROBERT L. WRIGHT, CHAIRMAN OF
THE TARRANT COUNTY DEMOCRATIC
EXECUTIVE COMMITTEE, et al.
REUBIN JENKINS, INTERVENOR

CA 3-3739

3-Judge

WILLIAM PATE, ON BEHALF OF HIMSELF
AND ALL OTHERS SIMILARLY SITUATED

vs.

GEORGE A. McALMON, JR., AS CHAIRMAN OF
THE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE OF EL PASO COUNTY, TEXAS
AND INDIVIDUALLY AND THE COUNTY DEM-
OCRATIC EXECUTIVE COMMITTEE OF EL

PASO COUNTY, TEXAS AND THE PRIMARY COMMITTEE

CARLOS GUZMAN, LUZ A. LUZANO, ANDREA L. SIFUENTES AND MANUEL SAPIEN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, AND AS MEMBERS OF U.N.I.O.N., INCORPORATED, INTERVENORS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

Notice is hereby given that Martin Dies, Jr., Secretary of State of the State of Texas, Dr. Elmer C. Baum, Chairman of the State Democratic Executive Committee, Dr. J. D. Tomme, Jr., Chairman of the Tarrant County Democratic Executive Committee, George A. McAlmon, Jr., Chairman of the County Democratic Executive Committee of El Paso County, Texas, the County Democratic Executive Committee of El Paso County, Texas, and the Primary Committee, the Defendants in the above styled and numbered cause, hereby appeal to the Supreme Court of the United States from the following portion of the judgment entered in this action on the 21st day of December, 1970:

> "For the reasons stated in the Opinions filed in the above styled cases, it is ORDERED, ADJUDGED and DECREED that Tex. Election Code Ann. Arts 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967) are hereby declared to be unconstitutional because they infringe upon First Amendment rights without any compelling justification in violation of the First and Fourteenth Amendments and that the State of Texas, through its po-

litical parties, is enjoined from the enforcement of Tex. Election Code Ann. Arts 13.07a, 13.08, 13.08a, 13.15, and 13.16 (1967)."

II.

This appeal is taken pursuant to 28 U.S.C. §1253.

III.

The Clerk will please prepare and certify a transcript of the entire record in this cause for transmission to the Clerk of the Supreme Court of the United States in accordance with Rule 12 of the Rules of the United States Supreme Court.

IV.

The following question is presented by this appeal: Whether Artieles 13.07a, 13.08, 13.08a, 13,15, and 13.16 of the Texas Election Code are unconstitutional in that they violate the First and Fourteenth Amendments of the Constitution of the United States.

Respectfully submitted,

CHARLES F. HERRING
906 Perry-Brooks Building
Austin, Texas 78701

ESTIL VANCE, JR.
1800 First National Bank Bldg.
Fort Worth, Texas 76102

MARK F. HOWELL
508 Southwest National Bank Bldg.
El Paso, Texas 79901

CRAWFORD C. MARTIN
Attorney General of Texas

WILLIAM J. CRAIG
Assistant Attorney General

(Signature)

PAT BAILEY
Assistant Attorney General

W. O. SHULTZ II
Assistant Attorney General

P. O. Box 12548
Capitol Station
Austin, Texas 78711

Attorneys for Defendants

PROOF OF SERVICE

I, Pat Bailey, one of the attorneys for the Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that one the ____ day of February, 1971, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto as follows: on all of the Plaintiffs and Intervenors herein by mailing copies in duly addressed envelopes with First Class Postage Prepaid to their respective attorneys of record: Mr. H. Averill Sweitzer, Fifth Floor, Manor House, Dallas, Texas 75202; Mr. A. L. Crouch, 109 Taylor, Fort Worth, Texas 76102; Mr. John L. Fashing, 608 Southwest National Bank Building, El Paso, Texas 79901; Mr. Fred Weldon and Mr. Stuart R. Abelson, 119 N. Stanton Street, Room 215, El Paso, Texas 79901.

PAT BAILEY